SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 943

WAYNE TURNER, APPELLANT,

vs.

LOUISIANA

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

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9 IN THE TWENTY FIRST JUDICIAL DISTRICT COURT OF LOUISIANA, IN AND FOR THE PARISH OF TANGIPAHOA

No. 9752

STATE OF LOUISIANA

V.

WAYNE TURNER AND SHIRLEY TURNER

Minute Entry of Appointment of Attorneys to Represent Accused—February 16, 1961

This day Court convened at nine thirty o'clock A. M. pursuant to regular order of adjournment. Present his Honor H. R. Reid, Judge presiding, Duncan S. Kemp, District Attorney, Norman P. Vernon Clerk of Court and Tom I. Sanders Sheriff.

This day the accused Wayne Turner and the accused Shirley Turner, both being personally present in open Court, the Court appointed Mr. Charles B. W. Palmer and Mr. Frank M. Edwards, Jr., Attorneys for Mrs. Shirley Turner and John L. McGee and Allen B. Bierson, Jr., Attorneys for Mr. Wayne Turner and the Clerk ordered to notify all Attorneys, and also notify them that the accused will be arraigned on Thursday February 23rd 1961.

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20 IN THE TWENTY FIRST JUDICIAL DISTRICT COURT OF LOUISIANA, IN AND FOR THE PARISH OF TANGIPAHOA

No. 9752

STATE OF LOUISIANA

V.

SHIRLEY TURNER

Minute Entry of Change of Plea to Guilty of Manslaughter by Shirley Turner—March 5, 1962

This day Court convened at nine thirty o'clock A. M. pursuant to regular order of adjournment. Present his Honor F. S. Ellis Judge presiding, Duncan S. Kemp, District Attorney, Norman P. Vernon, Clerk of Court and Tom I. Sanders, Sheriff.

This day the accused Shirely Turner, being personally present in open Court and accompanied by her attorneys, Charles B. W. Palmer and Frank M. Edwards, Jr., asked leave of the Court to change her plea of not guilty to Murder, to guilty of Manslaughter.

The District Attorney, Duncan Kemp, personally present accepted the plea of Guilty to Manslaugher. The Court then asked Shirley Turner if this were her plea and she having replied, personally that it was, Court ordered her remanded to the Parish Prison until April 5th, 1962, to wait sentence.

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21 IN THE TWENTY FIRST JUDICIAL DISTRICT COURT OF LOUISIANA, IN AND FOR THE PARISH OF TANGIPAHOA

No. 9752

STATE OF LOUISIANA

v.

WAYNE TURNER

Minute Entry of Order Relieving John McGee as Attorney For Wayne Turner—March 9, 1962

This day Court convened at nine thirty o'clock A. M. pursuant to regular order of adjournment. Present his Honor F. S. Ellis, Judge presiding, Duncan S. Kemp, District Attorney, Norman P. Vernon, Clerk of Court and Tom I. Sanders, Sheriff.

This day on motion of John McGee in open Court he filed a motion to be dismissed as Attorney for Wayne Turner, and Court ordered that he be relieved of said appointment.

22 IN THE TWENTY FIRST JUDICIAL DISTRICT COURT OF LOUISIANA, IN AND FOR THE PARISH OF TANGIPAHOA

No. 9752

STATE OF LOUISIANA

v.

WAYNE TURNER AND SHIRLEY TURNER

Minute Entry of Service of Jury List to Wayne Turner and Assignment for Trial—March 15, 1962

This day Court convened at nine thirty o'clock A. M. pursuant to regular order of adjournment. Present his Honor Warren W. Comish, Judge presiding, Duncan S. Kemp, District Attorney, Norman P. Vernon, Clerk of Court and Tom I. Sanders, Sheriff.

This day the accused, Wayne Turner, being personally present in open Court, was personally served with a certified copy of the Jury list for the week of June 4th, 1962, and the case assigned for trial on June 4th, 1962. His attorneys were ordered notified of the trial date.

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23 IN THE TWENTY FIRST JUDICIAL DISTRICT COURT OF LOUISIANA, IN AND FOR THE PARISH OF TANGIPAHOA

No. 9752

STATE OF LOUISIANA

v.

WAYNE TURNER

Minute Entry of Appointment of Attorney to Represent Wayne Turner—April 2, 1962

This day Court convened at nine thirty o'clock A. M. pursuant to regular order of adjournment. Present his Honor F. S. Ellis, Judge presiding, Duncan S. Kemp, District Attorney, Norman P. Vernon, Clerk of Court and Tom I. Sanders, Sheriff.

This day the Court appointed Henry Mentz, as Counsel for the accused Wayne Turner.

28 IN THE TWENTY FIRST JUDICIAL DISTRICT COURT OF LOUISIANA, IN AND FOR THE PARISH OF TANGIPAHOA

No. 9752

STATE OF LOUISIANA

v.

WAYNE TURNER

Drawing of Jurors—June 4, 1962

This day this court convened at nine thirty o'clock A. M. pursuant to regular order of adjournment. Present his Honor F. S. Ellis, Judge presiding, Duncan S. Kemp, District Attorney, Norman P. Vernon, Clerk of Court and Tom I. Sanders, Sheriff.

This day this case came up pursuant to regular order of assignment. The State being represented by District Attorney, Duncan S. Kemp and the Assistant District Attorney, Leonard E. Yokum, and the accused Wayne Turner being personally present in open Court and accompanied by his Attorney, Henry Mentz, Jr. and Allen B. Pierson, Jr. and all parties having announced their readiness for trial the drawing of Jurors was commenced. From the list of regular Jurors drawn and to serve for the week beginning Monday June 4th, 1962, 35 were called, one at a time on their voir dire, 26 were excused for cause by the Court and four challenged by the defense and five were accepted, sworn and duly empannelled to try this case and are as follows: Elijah Baham, Paul Casanova, Charlie P. Falcona, Edward H. Hayden and John E. Wells, and the list of regular jurors being exhausted, 79 tales jurors were ordered summoned for to-morrow morning at 9:30 A. M. to complete the jury and the jury was placed in charge of the Sheriff and the accused remanded to the parish jail, in charge of the Sheriff.

29 IN THE TWENTY FIRST JUDICIAL DISTRICT COURT OF LOUISIANA, IN AND FOR THE PARISH OF TANGIPAHOA

No. 9752

STATE OF LOUISIANA

v.

WAYNE TURNER

Drawing of Jurors—June 5, 1962

This day Court convened at nine thirty o'clock A. M. pursuant to regular order of adjournment. Present his Honor Frederick S. Ellis Judge, presiding, Duncan S. Kemp, District Attorney, Norman P. Vernon, Clerk of Court and Tom I. Sanders, Sheriff.

This day this case came up pursuant to regular order of continuance. The State represented by Duncan S. Kemp, District Attorney, and Leonard E. Yokum, Assistant District Attorney, and Leonard E. Yokum, Asst. District Attorney, and the accused Wayne Turner being personally present in Court and represented by his Attorneys of record, Henry A. Mentz, Jr. and Allen B. Pierson, Jr., and the jury being polled, showed the following present: Elijah Baham, Paul Casanova, Charlie P. Falcone, Edward H. Hayden and John E. Wells, and all parties having announced their readiness for trial the case was proceeded with and from the list of Talesmen summoned for this day Forty three (43) were called on their voir dire, one at a time twenty eight (28) were excused by the Court for cause, One challenged by the State and seven challenged by the accused and seven accepted, sworn and duly empannelled so try this case and are as follows: Harry J. Watkins, Joseph H. Lester, Andrew Perrilloux, Robert M. Foster, David D. Triche, Albert Koerin and Johnnie J. Cockerham. The jury being now complete is as follows: Elijah Baham, Paul Casanova, Charlie P. Falcone, Edward Hayden, John E. Wells, Harry J. Watkins, Joseph H. Lester, Andrew Perrilloux, Robert M. Foster, David D. Triche, Albert Koerin and Johnnie J. Cockerham. The Court ordered that Twenty five names be drawn from the Tales Jury Box and summoned to complete the Jury, but the jury being completed from the former list the Court

ordered this panel of twenty five discharged. The case was proceeded with and after the District Attorney and defense counsel had made the opening statements testimony was commenced and after hearing three witnesses for the State and it being past the usual hour of adjournment Court was ordered adjourned till to-morrow morning and the case was contined till 9:30 A. M. to-morrow morning. The jury was placed in charge of the Sheriff and the accused was remanded to the parish jail in charge of the Sheriff.

IN THE TWENTY FIRST JUDICIAL DISTRICT COURT OF LOUISIANA, IN AND FOR THE PARISH OF TANGIPAHOA

No. 9752

STATE OF LOUISIANA

V.

WAYNE TURNER

Verdict of the Jury—June 6, 1962

This day Court convened at nine thirty o'clock A. M. pursuant to regular order of adjournment. Present his Honor F. S. Ellis, Judge presiding, Duncan S. Kemp, District Attorney, Norman P. Vernon, Clerk of Court and Tom I. Sanders, Sheriff.

This day this case came up pursuant to regular order of continuance. The State represented by Duncan S. Kemp, District Attorney, Leonard E. Yokum, Assistant District Attorney, and the accused Wayne Turner represented by Henry A. Mentz, Jr. and Allen B. Pierson, Jr., and the accused Wayne Turner, being personally present in open Court and all parties having announced their readiness to proceed with the case, the taking of testimony was commenced, and after hearing all of the testimony for the State the State Rested and the defense rested without putting on any evidence, and after argument of counsel and the charge of the Court to the jury, and they were shown to their room for deliberation and after being out for a time, returned into open Court and presented to the Court their verdict, written on the back of the original indictment, which is as follows: "Guilty as Charged Guilty,

John E. Welles, Foreman." which verdict was accepted by the Court and ordered recorded. The jury was discharged and the accused remanded to the parish jail in charge of the Sheriff.

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32 IN THE TWENTY FIRST JUDICIAL DISTRICT COURT OF LOUISIANA, IN AND FOR THE PARISH OF TANGIPAHOA

No. 9752

STATE OF LOUISIANA

v.

WAYNE TURNER

Motion for New Trial, Overruling Thereof and Sentence—June 29, 1962

This day Court convened at 2:00 P. M. pursuant to regular order of adjournment. Present his Honor F. S. Ellis, judge presiding, Duncan S. Kemp, District Attorney, Norman P. Vernon, Clerk of Court and Tom I. Sanders, Sheriff.

This day this matter came up on motion for new trial. The defendant Wayne Turner, being personally present in open Court and accompanied by his counsel, Henry Mentz and Allen Pierson, Jr., and the State being represented by the District Attorney, Duncan S. Kemp and his assistant L. E. Yokum, the matter was taken up and the Court overruled the motion for a new trial, whereupon a bill of exception was taken by consent for defense. Bills of Exceptions to the trial were received and filed in evidence together with the per curiums appended thereto. On motion of District Attorney, the accused was arraigned for sentence. Upon being asked if he had anything to urge why the sentence of the law should not be imposed upon him and he having replied, and announced his readiness for sentence, whereupon the Court, imposed the following "That you, Wayne Turner, having been found guilty of Murder by a jury, are now sentenced to death, by electrocution." It was judicially ascertained that the accused was a white male age 27.

34 IN THE TWENTY FIRST JUDICIAL DISTRICT COURT OF LOUISIANA, IN AND FOR THE PARISH OF TANGIPAHOA

STATE OF LOUISIANA

Versus

WAYNE TURNER W/M 25 Alias CARL WAYNE SCOTT

Criminal Affidavit—October 8, 1960

Before me, the undersigned Judge, in and for the 21st Judicial District of said Parish, personally appeared Hulon Simmons, who being duly sworn declares and says that on the 7th day of October 1960 in said Parish and State, one Wayne Turner, alias Carl Wayne Scott, wilfully and maliciously did commit murder of Albert Young in Hammond at Phillips 66 Station morning of October 7th 1960 at Approx 2:00 A.M. against the peace and dignity of the State of Louisiana, and contrary to the form of the Statute in such cases made and provided.

Whereof, said affiant prays that said Wayne Turner, alias Carl Wayne Scott maybe apprehended and held to answer the above charge and to be dealt with relative to the same as law and justice may require.

HULON SIMMONS

Sworn to and subscribed before me this 8th day of October 1960.

H. R. REID, Judge
Residing at

Witnesses for State

Murphy Hebert
Tom Sanders
Hulon Simmons
Harry Joynton
Mervin Falcon
Vincent Rispone

"True Bill:
S/ W. B. CONEY"

36 IN THE TWENTY FIRST JUDICIAL DISTRICT COURT OF LOUISIANA, IN AND FOR THE PARISH OF TANGIPAHOA

(File endorsement omitted)

Indictment—Filed February 10, 1961

THE GRAND JURORS of the State of Louisiana, duly impanneled and sworn, in and for the body of the Parish of Tangipahoa, in the name and by the authority of the said State upon their oath, find and present:

That Wayne Turner and Shirley Turner, acting together, aiding and assisting each other, late of the Parish of Tangipahoa, on the 7th day of October in the year of our Lord One Thousand nine hundred and Sixty with force and arms, in the Parish of Tangipahoa, aforesaid, and within the jurisdiction of the Twenty First Judicial District Court of Louisiana, for the Parish of Tangipahoa, murdered, Albert Young in violation of Article 30 of the Louisiana Criminal Code.

Contrary to the form and the Statutes of the State of Louisiana, in such cases made and provided, and against the peace and dignity of the same.

DUNCAN S. KEMP,
District Attorney for the 21st Judicial District of Louisiana

10

37 ENDORSEMENT ON BACK OF BILL OF INDICTMENT

Div B

No. 9752

STATE OF LOUISIANA

Versus

WAYNE TURNER AND SHIRLEY TURNER

Indictment for Murder

Witnesses:

Murphy Hebert
Sheriff; Thomas I. Sanders
Dy. Hulon Simmons
Dy. Harry D. Johnton
Dy. Mervin Falcon
Dy. Vincent Rispone
Dr. L. L. Ricks
John L. Koch, Jr., State Police Lab, Baton Rouge, La.

A true Bill
S/ W. B. CONEY, Foreman of Grand Jury

Filed February 10th 1961

Ellen W. Miliet, Dy. Clerk

"Guilty as Charged
Guilty

S/ JOHN E. WELLES, Foreman."

134 IN THE TWENTY FIRST JUDICIAL DISTRICT COURT OF LOUISIANA, IN AND FOR THE PARISH OF TANGIPAHOA

No. 9752

STATE OF LOUISIANA

v.

WAYNE TURNER AND SHIRLEY TURNER

Attorney's Application for Discharge—Filed March 20, 1962

/s/ LIDA MORRISON
Dy. Clerk of Court

Now into Court comes, John L. McGee, one of two attorneys appointed by this Honorable Court to defend Wayne Turner, one of the defendants in the above numbered and captioned cause and respectfully informs the Court that he is no longer able to serve as attorney for Wayne Turner for the following reasons:

1. Mover, along with A. B. Pierson, Jr. was informed of his Court appointment by letter from this Court dated Feb. 16, 1961. Since that time Mover has adequately defended the accused at his own expense without reimbursement of expenses and without fee.

2. Since his appointment, Mover, has accepted the position of Secretary-Treasurer of the Florida Parishes Homestead Association of Hammond, Louisiana, which requires his daily services and limits movers general practice of law. As Secretary-Treasurer the Mover is the Sale managing officer of the several million dollar business which requires his pre-daily during banking hours.

3. Mover can continue to fill Court appointments as defense attorney in trials which do not last over one day, but can not serve as defense counsel for a capital offense case which last longer. The above captioned case will certainly require a minimum of four full days for trial. Mover can not now accept the defense of a capital case regardless of the fee for lack of time and certainly can not be expected to serve in said capacity on Court appointment.

4. It would be impossible for the Mover, John L. McGee, to be in Court any day between June 15 and June 30, 1962

which is the period of audit of the books of the Homestead.

135 5. Defendant, Wayne Turner, will not be prejudiced by replacement of counsel at this point. The case against him is at the present time in the same stage as it was after indictment. Associate attorney, A. B. Pierson, Jr., is thoroughly familiar with the case from the start and a new attorney may aid the defendant.

6. Attached letter made a part hereof by reference Considering the above reasons and the reasons orally given in Court John L. McGee moves that he be excused from service in the above captioned case and that he be finally discharged as counsel for the defendant Wayne Turner. And for all general and equitable relief.

/s/ JOHN L. McGEE
Attorney for W. Turner

Certificate Annexed to Attorney's Application for Discharge

136 STATE OF LOUISIANA
PARISH OF TANGIPAHOA

BEFORE ME, the undersigned authority, personally came and appeared John L. McGee, who being duly sworn, did depose that he is the mover in the above motion or application and that all the allegations therein are true and correct.

Sworn to and subscribed before me this 8th day of March, 1962.

/s/ HENRY A. MENTZ, JR.
Notary

Order Granting Attorney John L. McGee's Application for Discharge—March 19, 1962

137 Considering the foregoing motion, IT IS ORDERED BY THE COURT, that John L. McGee be excused as attorney for the defendant, Wayne Turner and that he be finally discharged from his appointment as such by this Court.

Signed at Covington, Louisiana this 19th day of March, 1962.

/s/ F. S. Ellis
Judge

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141 IN THE TWENTY FIRST JUDICIAL DISTRICT COURT OF LOUISIANA, IN AND FOR THE PARISH OF TANGIPAHOA

STATE OF LOUISIANA

VS.

WAYNE TURNER

(File endorsement omitted)

Report of Lunacy Commission—Filed May 11, 1962

* * * * * * * * * *

142 Dr. L. L. Ricks, Coroner and Member of the Lunacy Commission, after being duly sworn to tell the truth, the whole truth and nothing but the truth testified as follows:

* * * * * * * * * *

144 By Mr. Pierson:

Q. Dr. Ricks have you had any special training in psychiatry? A. Yes sir.

Q. Would you state the nature of that training? A. About eighty years of dealing with foolish people. And I don't mean locked up either—I mean out in the world, stealing and robbing, killing and lying—I think I know them pretty well.

Q. Dr. Ricks, how many times did you examine the defendant? A. How many times?

By the Counsel: Yes sir, on how many different occasions? A. Well, I had him out twice—you know in the room right down there, just two times.

Q. Two times . . . approximately how long did those examinations last? A. Oh, I reckon the first one lasted about an hour and a half, and the second one did not last over thirty minutes.

Q. And from those two examinations, Dr. Ricks, you can say that on a date approximately two years previously the defendant was sane? A. Yes.

* * * * * * * * * *

145 Q. Was this examination conducted in the presence of anyone else besides yourself and the defendant? A. No. Oh, there might have been some Deputy walked in the room there once or twice, I am not sure about that. Course I was there with him alone.

Q. You think a Deputy walked through the room once or twice? A. I said they may have.

* * * * * * * * * * * *

158 IN THE TWENTY FIRST JUDICIAL DISTRICT COURT OF LOUISIANA, IN AND FOR THE PARISH OF TANGIPAHOA

No. 9752

STATE OF LOUISIANA

v.

WAYNE TURNER

Report of Lunacy Commission (5-7-62)—Filed May 31, 1962

Dr. Sturm, psychiatrist, after being duly sworn to tell the truth, the whole truth and nothing but the truth testified as follows:

* * * * * * * * * * * *

159 Mr. Allen B. Pierson Jr.:

Q. Dr. Sturm you remember the last time you were in this Court and testified in this matter? A. Yes.

Q. You remember that you did testify previously in this matter? A. Yes.

Q. At that time you made a statement—I do not have the words you used—it was to the effect that Wayne Turner was incapable of learning the differfence between right and wrong, do you remember making such a statement? A. Yes, sir, I do.

Q. Have you examined Turner since the day that
160 you made that statement? A. Nothing but just talking to him this morning.

Q. How long was that? A. Oh, possibly two or three minutes.

Q. What made you change your mind, Doctor? A. Right to the point—I got mixed up on the Stand, couldn't think of the right word to use.

* * * * * * * * * * * *

181 IN THE TWENTY FIRST JUDICIAL DISTRICT COURT OF LOUISIANA, IN AND FOR THE PARISH OF TANGIPAHOA

No. 9752

STATE OF LOUISIANA

v.

WAYNE TURNER

(File endorsement omitted)

Motion for Mistrial—Filed: 6 June 1962

Now into court comes Wayne Turner, defendant herein through his attorneys of record and moves for a mistrial on the following grounds.

1. That the Jury has been separated on numerous occasions while going to and from the restaurant, some being placed in one car and others in another car.

2. At the noon meal on June 5, 1962, juror Paul Casanova was returned to the courthouse in the company of three deputy sheriffs, while the other jurors were returned in the custody of other deputies. Mr. Casanova was observed conversing with the three deputies in the automobile.

3. One of the above mentioned three deputies was Vincent Risponi, who is a witness for the prosecution.

4. Throughout the progress of this trial Deputy Risponi has handled the jury, watched over them, cared for and provided for their needs along with the other deputies.

All of this action is highly prejudicial to the defendant and is likely to have some influence on the jury prejudicial to the defendant which results in the denial of a fair trial by an impartial jury.

WHEREFORE defendant prays that this court declare a MISTRIAL and the jury be discharged, and for all other relief as may be required by the law and the circumstances.

/s/ HENRY MENTZ
/s/ ALLEN B. PIERSON, JR.

182 IN THE TWENTY FIRST JUDICIAL DISTRICT COURT OF LOUISIANA, IN AND FOR THE PARISH OF TANGIPAHOA

No. 9752

STATE OF LOUISIANA

v.

WAYNE TURNER

Motion for a New Trial

ON MOTION OF WAYNE TURNER, appearing herein through his court appointed counsel, Henry A. Mentz Jr. and Allen B. Pierson, Jr. moves the Court for a new trial upon the following grounds:

-1-

That Chief Criminal Deputy, Hulon Simmons, was the officer who took defendant's confession during the crucial period following the alleged commission of the crime; that Deputy Simmons possessed personal knowledge of the facts of the case and was a leading witness for the State of Louisiana.

-2-

That Deputy Vincent Risponi was the chief investigating officer immediately following the alleged crime and possessed personal knowledge of the entire case, and also was a leading witness for the State.

-3-

That the evidence in this case was that without the alleged confession by Wayne Turner, there would be grave and serious doubt as to the guilt of the accused; that further, without the testimony of Mr. Simmons there would be grave doubt as to the admissibility of the said confession.

-4-

That the testimony of Deputy Risponi as to the facts immediately following the time of the alleged crime, there would be a grave and serious lack of circumstantial evidence connecting the accused with this crime.

-5-

That the evidence shows that the testimony of Mr. Simmons and Mr. Risponi was vital to the State's case, and that a grave doubt would have existed without their said testimony.

183 -6-

That the record, and the exceptions made by defendant's counsel show that due and timely objection was made to the testimony of said witnesses upon the ground that said deputies were in actual charge of the jury; that they were physically present with the jurors in and out of the jury room, in automobiles and in eating places with the jury members, mingling with the jurors and on at least one occasion, with three deputies riding jury member Paul Casanova by himself from Ardillo's Restaurant to the Courthouse, a distance of approximately two miles.

-7-

That the fact that the same deputies were witnesses for the State is ipso facto prejudicial to the defendant and violates R.S. 15:394.

-8-

That none of defendant's witnesses were allowed in the jury room, nor in the privacy of the jurors, nor would any of defendant's witnesses have the same opportunity to mingle with the jurors as those witnesses used by the State.

-9-

That the jury members are entitled to deliberate and mingle with each other in privacy without the presence of witnesses for the State or for the defendant; and without the presence of any other person, Deputy Sheriffs included; that R.S. 15:394 does not contemplate the violation of the isolation of the jury by having the jury in charge of deputies, who are also witnesses for the State.

Wherefore Mover Prays: That this motion be duly filed and heard, and in due course sustained, and that a new

trial be granted, and that the verdict rendered herein be vacated.

HENRY A. MENTZ, JR.
and
ALLEN B. PIERSON, JR.

By H. H. MENTZ /s/
Attorney for Defendant

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184 IN THE TWENTY FIRST JUDICIAL DISTRICT COURT OF LOUISIANA, IN AND FOR THE PARISH OF TANGIPAHOA

No. 9752

STATE OF LOUISIANA

v.

WAYNE TURNER

(File endorsement omitted)

Bill of Exceptions—Filed: June 29, 1962

Be it remembered that on the trial of this cause on the 4-6 of June, 1962, the state to maintain their cause, offered the testimony of Chief Criminal Deputy Hulen Simmons who testified that he had taken the confession of the defendant; the circumstances surrounding the taking of said confession; and that the signatures were genuine and that the confession was freely given. Deputy also gave testimony relative to proof of the chain of evidence.

The state further offered, to maintain their case, the testimony of Deputy Vincent Rispone, who was the first officer on the scene and who make the official written report. Deputy Rispone testified with reference to the chain of evidence. Deputy Rispone further testified that Defendant, Wayne Turner had told him where to find certain incriminating articles which were relevant to the cause of the state and which were introduced into evidence and identified. Deputy Rispone also testified that Defendant Turner has made damaging admissions to him during the period when Defendant was in custody of Deputy Rispone and these admissions were admitted into evidence.

The testimony of both of these witnesses was essential to the establishment of the case for the state, and the state knew long before the trial that these witnesses would be used and the value of their testimony.

Defense counsel objected to their testimony and moved for a mistrial (out of the hearing of the jury) which motion was denied.

185 The motion was based upon the fact that both of the aforenamed deputies had been in and out of the jury room, had mingled with the jury; had spoken to the jurors and had provided for the needs of the jury during the three days of the trial. Deputy Simmons testified that he was in charge of the jury and that the other deputies worked under him. Both deputies were constantly present during the trial and Deputy Rispone occupied a seat next to the jury.

Also elicited on examination of the two deputies was the fact that for every meal, the jury had been placed in two or three cars and driven a distance of about two miles (one way) to a restaurant. Juror Paul Casanova was observed in an auto with three deputies after having been sworn, with no other jurors present. Two of the three deputies were Simmons and Rispone, above mentioned. Juror Casanova rode the two miles back to the Court house with the deputies.

Bills of Exception were reserved to each witness on motion for a mistrial.

Thereafter the jury returned a verdict of guilty as charged. Defendant shows that the presence of state's witnesses, whether they be deputies or not, is of itself prejudicial to the constitutional rights of Defendant and violative of due process of law; that the presence of said witnesses further violates the isolation of the jury as required by law in cases involving capital punishment; that the requirements of the law requiring that the jury be kept together has been violated by the incident of Juror Casanova being in the company of two of state's witnesses; that the requirement that the deputies simply isolate the jury from outside influence was violated in that the deputies mingled with the jury in the jury room, at meals, in

automobiles, and throughout the entire course of the trial.

186 Defendant, Wayne Turner, through his counsel, aforesaid, having submitted this his Bill of Exceptions to the District Attorney now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court pursuant to the statute in such case made and provided, which is done accordingly this 29th day of June, 1962.

/s/ F. S. Ellis
District Judge

187 **Per Curiam Attached to Bill of Exceptions**

Both of these deputies, on being questioned by the court, testified that they had never discussed anything having any bearing on the case with any member of the jury; that they had never discussed the case with each other or other deputies in the presence of the jury; and that they had never heard any aspect of the case discussed by any member of the jury. I could not see that any prejudice to the accused resulted.

/s/ F. S. Ellis
District Judge

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199 IN THE TWENTY FIRST JUDICIAL DISTRICT COURT OF LOUISIANA, IN AND FOR THE PARISH OF TANGIPAHOA

No. 9752

State of Louisiana

v.

Wayne Turner and Shirley Turner

Transcript of Hearing of June 5 and 6, 1962

* * * * * * * * * * *

200 We call Dr. L. L. Ricks.

Dr. Ricks, witness, after being duly sworn to tell the truth the whole truth and nothing but the truth testified as follows:

* * * * * * * * * * *

205 By Mr. Pierson:

Q. Doctor, what special training have you had in the field of psychiatry? A. What special training?

By the Counsel: Yes sir.

A. I have ate and slept, lived with, all kind of people, worked with them, lied with them and stole with them all my life. I think I am competent.

Q. But you have had no actual formal training in the field of psychiatry? A. Oh yes. I had lessons and studied on that when I was in College.

Q. That was back before 1916? A. Yes, well during 1916. That don't amount to nothing.

. . . . . .

219 **Charge of Court**

By the Court: Gentlemen, we are going to adjourn for the day now, and I charge you: Do not discuss this matter with any person whatsoever, and that you remain out of contact with any one other than yourselves. Anything that you need you will have to obtain through the
220 Deputy, and any calls that you want to make the Deputies will have to make for you.

Retire the Jury.

. . . . . .

227 Mr. Yokum: At this time we would like to call Deputy Hulon Simmons.

DY. SIMMONS, witness, after being duly sworn to tell the truth, the whole truth, and nothing but the truth testified as follows:

Q. State your full name for the record please. A. Hulon Simmons.

Q. What is your official position with the Parish of Tangipahoa? A. Deputy Sheriff.

Q. Were you so employed, on or about October 7th, 1960? A. I was.

Q. Did you have occasion, on or about that date to receive a small automatic pistol from the Ponchatoula Police Officer Hebert? A. I did.

Q. Would you recognize that pistol if you saw it? A. I would.

Q. Will you tell the Court how you could recognize it? A. I could recognize it because I initialed it, and put the date on it.

228 Q. I hand you a small black automatic pistol and ask you if that is the pistol you referred to? A. It is.

Q. Are your initials on it? A. Yes, "H.S."

Q. And from whom did you receive that? A. Officer Murphy Hebert, Ponchatoula Police Department.

Q. Is that pistol approximately in the same condition as when you received it? A. It is.

Q. Other than the initials? A. Yes sir.

Q. And what did you do with the pistol? A. I turned it over to Mervin Falcon.

Q. And you haven't seen it since. A. No sir. I haven't seen it since, until this morning.

By the Court: Is the date on there?

Mr. Yokum: Yes, Your Honor, "10-7-60."

Q. Is Officer Falcon the same party that was pointed out by the last witness? A. He is.

Q. You are well acquainted with him of course? You know him? A. Know him pretty good, yes sir.

Mr. Yokum: That is all.

Mr. Pierson: No questions, Your Honor.

By the Court: That is all.

Mr. Yokum: Your Honor we would like to re-
229 serve the right to recall the witness since we are trying to prove continuity of possession.

By the Court: All right.

* * * * * * * * * * *

258 Asst. D.A. Yokum: Call Deputy Vincent Respone.

DY. RISPONE, witness, after being duly sworn to tell the truth, the whole truth and nothing but the truth testified as follows:

Q. State your full name please. A. Vincent L. Rispone.

Q. Where were you employed on or about October 7th, 1960? A. Sheriff's Office, Tangipahoa Parish.

Q. Did you have occasion on or about that day to investigate a homicide of one Albert Young? A. I did.

Q. Will you tell the Judge and the Jury how you
259 got the call and what if anything you did? A. The Jailer called me around 3:00 A.M. on October 7th and asked me to go to Hammond to Phillips 66 Station and investigate someone they thought—in fact they didn't know what was wrong with him—but he was just lying there on the cement. En route to Hammond the Jailer radioed us and notified me that the man was dead, which then I called them and asked them to have Dr. Ricks meet us at Phillips 66, the Coroner. We arrived there around 3:10 or 3:15 A.M.

Q. Now when you say there, where do you mean? A. Phillips 66 Station right out of Hammond on Highway 190, Tangipahoa Parish, Louisiana.

Q. What did you find when you arrived at the scene? A. I found Mr. Albert Young's body there.

Q. And where was the body situated? A. The body was situated right in front of a 1960 Galaxie Ford which was parked directly in front of the door between the gas pump and the Service Station. His head was south and his feet north, laying on his back.

Q. Was he dead at the time you arrived there? A. He was dead, yes sir.

Q. Did you make a written report on this? A. I did sir.

Q. Just for the purpose of refreshing your memory, did you take the license number of the vehicle? A. I did sir.

Q. Did you mark that in your Report? A. I did.

Q. Would you refresh your memory from that Report and tell the Jury what the license number on the
260 vehicle was? A. It was a Louisiana license . . .

Mr. Pierson: Objection Your Honor, it has not been shown that the witness typed that Report, or that that is the actual Report.

By the Court: Identify the Report before he testifies from it.

Mr. Yokum: Can you identify that Report? A. Yes.

Q. Is that your signature on the second page? A. It is, yes sir.

Q. Did you obtain the license number and record it on a memorandum there and give that memorandum to anybody? A. I did.

Q. To whom did you give it? A. Corinne Watson who typed this. Oh, you mean at the scene? I give this to the Hammond Police Department.

Q. Did you obtain the license number from the vehicle. A. I did.

Q. Did you obtain a 28 on that license number? A. Immediately. About the first thing I did was tried to get a 28 from Hammond PD on this automoble.

Q. Now, what is a 28? A. It is a registration—who the car belongs to.

Q. What did the 28 Report show in regards to the vehicle? A. Well, I called back and they said the car belonged to Mr. Schaeffer in Leesville, Louisiana.

Q. That is the vehicle that was parked in front of the Station? A. That was the '60 Galaxie Ford.

Q. What if anything did you do then, Mr. Rispone? A. Well then I called Sheriff Sanders whole Department out.

261 Q. Was this car moved? A. That car was moved after CaptainWillie got there.

Q. And Captain Willie is the Gentlemen who checked the car? A. Yes sir. We had called him for finger print check.

Q. Did you have occasion later to accompany the Defendant Wayne Turner? A. Yes, I did.

Q. Is Wayne Turner in the Courtroom? A. Yes, he is.

Mr. Yokum: Will you point him out to the Judge and Jury? A. Sitting to the left of Mr. Mentz.

Mr. Yokum: Let the record show that the Witness pointed out the Defendant.

Q. What is the difference between the Defendant to-day and the date when this crime happened to your visual observation? A. Only his weight. He has lost a lot of weight.

Q. Now, when you say a lot of weight . . . A. I would say a hundred pounds.

Q. You have been in conference or in touch with him ever since that time? A. I have seen him off and on, yes.

Q. Regularly? A. Yes.

Q. Now where did you accompany the Defendant? A. Well, I have to start from the first here. When Officer Hebert picked him up he radioed and notified that he had

the suspect. At that time I was riding with Chief Deputy Hulon Simmons. We were close by and we went
262 and picked up Wayne and his wife from Officer Hebert. We then returned to Phillips 66 Station on Highway 190. That was the place where the crime was committed. We turned Shirley over to Sheriff Sanders and Wayne took us to show us where he had disposed of the clip.

Q. Now when you say disposed of "the clip", what do you mean "clip"? A. The clip of the automatic pistol—the 25 automatic pistol.

Q. Is that a container of the bullets? A. That is a container that holds the bullets.

Q. Where was this place located that he took you to? A. It was directly behind Phillips 66 from the Old Baton Rouge Highway in a wooded area.

Q. Was there a fence around the place? A. There was a fence between the highway and the woods.

Q. And how far off behind the fence was this place where you were taken? A. I would say 50 or 60 feet from the Highway back in the woods. We went way up. He was going to show us the exact place and we went way up and then walked probably two or three blocks before we came to the spot where he remembered throwing the clip.

Q. And who pointed this particular place out to you? A. Wayne Turner.

Q. The man you identified as the Defendant? A. Yes.

Q. What happened if anything that you know about this case now? Do you recall whether or not you found a weapon near the body of the deceased, Albert Young? A. The deceased? Yes sir.

263 Q. Is this the weapon, or similar to that? A. Yes sir.

Mr. Yokum: That weapon was removed from this envelope? A. Yes.

Q. Is that your finger print? A. Yes sir.

Q. And where did you find this weapon? A. It was lying right by Mr. Albert Young on his right side.

Q. Did he have it in his hand? A. No, it—maybe inches away from his body there.

Q. Now this envelope containing five bullets, do you recognize the signature on that envelope? A. Yes sir, I do.

Q. And what does that envelope contain? A. I examined this gun and took four live ammunition out of it and one empty cartridge.

Q. Is that the one you speak of? A. It appears to be.

Q. It came out of the same envelope? A. Yes.

Q. What did you do with these articles? A. I put them in an envelope and turned them over to Dy. Sheriff Mervin Falcon.

Q. Did you make any research for slugs? A. No sir.

Q. From either this gun or the small caliber pistol? A. Well, I first found three small calibers, 25 automatic—

you could tell they were ejected from an automatic—

264 Q. Were they shells, or . . . A. Empty cartridges.

One was located about six feet from the front door on the drivers side, and there was one picked up about eight feet from the back door, and one was picked up on top of the trunk. It was just a—just ejections from the automatic.

Mr. Pierson: Objection Your Honor. This is an opinion of the witness.

By the Court: That is correct. I will sustain the objection. Just testify to what you found Deputy.

Mr. Yokum continuing:

Q. Did you find any slugs? A. No sir, I did not find any.

Q. Did you make a diligent search for slugs? I made a search.

Q. Did you find any 38 or 25? A. No sir, I didn't.

Mr. Yokum: That is all. Your witness.

Mr. Pierson:

Q. Did you find a broken headlight on the Ford? A. There was a broken headlight on the Ford, yes sir.

Mr. Pierson: Your Honor at this time the Defense Counsel would like to make a motion and in order to do this I believe it is best for the Jury to be retired.

By the Court: Retire the Jury.

Motion for a Mistrial

Mr. Pierson: At this time the Defense Counsel would like to move for a mistrial on the following grounds
265 and we intend to substantiate these grounds by sworn evidence before the Court:

No. 1. Contrary to Revised Statute 15:394 the Jury hearing this case had been separated on numerous occasions, primarily going to and from Ardillo's Restaurant. The Jurors have been taken in separate cars in company with different Deputies.

No. 2. At the noon meal on June 5, 1962, which was yesterday, at noon Juror Paul Casanova was returned to the Courthouse alone, or rather in the company of three Deputy Sheriffs. He was entirely separated from the other Jurors on this occasion, and as I said he was in the company of three Deputy Sheriffs. One of those three Deputy Sheriffs was the witness Vincent Rispone, who is a witness for the prosecution. This was observed: It was observed that the Deputies and the Juror who has been selected, Mr. Casanova, were talking, and that they were smiling. In addition, throughout the progress of this trial it has been obvious to the Court, to the spectators, and everybody that Deputy Rispone who is a prosecution witness is handling the Jury, is in and out of the Jury Room and has sat by the Jury in order to segregate them from the audience in compliance with RS 15:394.

Therefore, Your Honor, we move for a mistrial.

Mr. Yokum: Your Honor please unless there is some showing made that some attempt was made to tamper with this Juror, or to influence him, I don't think the grounds are valid.

By the Court: I think that is right, but I think in view of the Motion I think that it is necessary that Dy. Rispone be questioned on that point. I would suggest that in view of the fact that you made the Motion, Mr. Pierson, that if there is any information that should be elicited that you cross-examine Dy. Rispone.

266 Mr. Pierson:

Q. Did you have lunch yesterday at Ardillo's Restaurant? A. I did.

Q. How did you return from Ardillo's? A. I have been going back and forth . . . I believe I rode with another Deputy.

Q. Did you ride with two other Deputies? A. I think so.

Q. On the back seat? A. Probably so.

Q. Who was sitting next to you? Was it Paul Casanova, the second Juror chosen in this case? A. It is Paul or Pete?

By the Counsel: Paul. A. He sat back there.

Q. Were there any other Jurors in the car? A. I don't . . .

Q. Do you remember if there were any other Jurors in the car? A. No, I don't believe.

Q. Who were the other Deputies with you at that time? A. Now, truthfully I remember Hulon Simmons and I don't know who drove that car. It takes three cars to take them out there.

Q. Have you been in and out of the Jury Room during the course of this trial? A. I was in the Jury Room the first night which was Monday Night.

Q. Did you know at that time that you were going to be a witness for the prosecution? A. I would say yes.

267 Q. Isn't it a fact that your name is listed on the indictment as a witness? A. Well, I have not looked at the indictment but I am sure that it is.

Q. Do you recall the conversation returning from Ardillo's yesterday—what it was about—or anything that was said? A. If we said anything it wasn't about this—the trial.

Q. You are positive about that? A. Positive.

Q. But you don't remember exactly who was riding with you? A. In the back seat it was Hulon Simmons and Mr. Casanova and I. I don't remember who drove—what Deputy drove the car.

Q. Have you been assisting the other Deputies during the course of this trial, in retiring the Jury and in caring for their needs? A. I have.

Q. As much as any other Deputy on the Sheriff's staff? A. I would say as much.

Q. Isn't it a fact that you have been sitting in this vicinity through the course of the trial? A. That is a fact.

Q. Have you spoken at any time during the course of the trial to any of the Jurors? About anything? A. About anything?

By the Counsel: Yes. A. I have.

Q. In connection with providing for their needs . . . seeing that they were comfortable . . . showing them
268 when to go into the Jury Room et cetera? A. Yes.

Mr. Pierson: Your Honor, I rest.

Mr. Yokum: Your Honor, I see no violation of the law there, if your Honor please.

Motion for Mistrial Overruled

By the Court: In the absence of any showing of any prejudice to the Defendant, Mr. Pierson I am going to have to overrule your Motion for a Mistrial.

Mr. Pierson: Your Honor, please in this case I believe that the mere placing of a Juror in the care of one of the witnesses for the prosecution, charging this Gentlemen with caring for their needs and providing for their comforts is prejudicial in itself, and especially segregating the Jurors in company of three Deputies is also prejudicial.

By the Court: I fail to see it.

Mr. Yokum: Your Honor, please . . .

By the Court: Without arguing I am going to rule in your favor Mr. Yokum.

Mr. Yokum: Your Honor, he knew this man was going to testify why is he just now making this objection?

Mr. Pierson: I didn't really know that Deputy Rispone was going to testify until after he was on the Stand.

By the Court: I am not going to grant your Motion Mr. Pierson.

Mr. Pierson: To which ruling of the Court we reserve a *Bill of Exception* and ask that a written motion be filed herewith and made a part of that Bill of Exception and ask that the sworn testimony of Deputy Rispone be made a part of that Bill of Exception.

By the Court: It is so ordered.

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269 The Jury returned to the Courtroom.

Mr. Pierson, continuing:

Q. Dy. Rispone during your testimony on direct examination I noticed that you were, or it appeared to me,

that you were dictating to the Stenographer, have you memorized your testimony? A. No sir.

Q. Were you the first person to arrive at the scene? Or the first Deputy Sheriff to arrive? A. Yes sir. The first Deputy Sheriff.

Q. Did you notice the broken headlight on the Ford? A. Yes sir.

Q. Did you look in and about that broken headlight in order to find a 38 caliber slug? A. I looked in and around, yes sir.

Q. Did you find any? A. I did not.

Q. Did you find any bullet holes there? A. Not a bullet hole, but the glass was broken out.

Q. And you stated that the 38 caliber revolver was just a few inches from the body of the deceased? A. Approximately, yes sir. Near the body of the decreased.

Q. And you examined the gun and found it loaded? A. All except one cartridge.

Q. And one empty chamber? A. And one empty chamber.

Q. Are you familiar with firearms? A. Somewhat.

270 Q. You wear one? A. Yes.

Q. You keep an empty chamber in your revolver? A. I don't, no sir.

Q. Do some of the Deputies on the Staff? A. I believe there are some who keep an empty chamber, I don't.

Q. So, finding five cartridges in a revolver does not surprise you, is that it? A. No sir. It doesn't surprise me.

Q. Did you ascertain who owned the 38 caliber revolver? A. Yes.

Q. Who was that? A. I was told who owned it.

Q. Who told you that? A. Mr. Davidge. Mr. Davidge.

Mr. Yokum: Unless the man knows of his own knowledge . . .

Mr. Pierson: I did not ask him who owned it, Your Honor, I asked him who told him who owned it.

By the Court: I realize that, but don't ask him.

Mr. Yokum: Rather than being technical Your Honor we have no objection to having the Jury know who owned it.

By the Court: Very well, go ahead and ask the question.

Mr. Pierson: You testified that the body was lying

directly in front of the automobile, is that correct? A. Yes sir.

Q. Did you hear the testimony yesterday of one Jerry Martin? A. I did.

Q. Did you hear Mr. Martin testify that the body
271 was lying between the front door of the filling station and the automobile, and not in front of the automobile? A. You said between the car and the station?

By the Counsel: Yes. A. Well, it was not. It was lying in front of the car.

Q. You are absolutely sure of that? A. I am positive.

Q. Approximately, how far in front of the car? A. I didn't measure, but I figure a few feet from the car.

Q. Did you take the 38 caliber pistol in your custody? A. I took it and put it in the envelope.

Q. Did you handle it in such a way as not to destroy any finger prints which might be on it? A. I would say that I did.

Q. Can you describe how you handled it? A. I picked it up from the trigger guard here, and put it in the envelope.

Q. Now you testified that you found three empty shell cases, were those 25 caliber? A. 25 caliber. There was one approximately 6 feet from the left front door, and one approximately 8 feet from the rear left door, and one directly on top of the trunk of the car.

Q. Let me ask you this: Could the positions—what did the different positions of the shell cases indicate to you? A. You mean my opinion?

Q. Well, let's say, did it indicate anything? A. Only thing indicated to me was that it was fired from an automatic.

272 Q. Were the three shots fired from the same position? A. I couldn't answer that.

Mr. Yokum: Your Honor, he is asking for an opinion.

By the Court: The answer took care of that.

Mr. Pierson, continuing:

Q. Did you notice any marks of violence on the body? Other than the one gunshot wound? A. No sir. I didn't notice any marks.

Q. Just the one gunshot wound? A. I didn't look at that close. I knew he had a wound in his heart there.

Q. Approximately, how far apart were the three empty shell cases—the first from the second, and the second from the third? A. A matter of feet. I think two feet from the first shell, and then maybe about four feet from the second shell to the third shell. I don't know if it was first, second, or third. I am just using one, two and three. There were several feet difference between the three.

Q. Tell me, was the cement around the gas pump wet when you arrived? A. I don't recall.

Q. It could have been? A. It could have been, yes sir.

Q. Approximately how long did you look around the scene in an attempt to find the other two 25 caliber slugs and the one 38 caliber slug that were missing? A. I was there a good while until the Sheriff's Office . . .

Q. I mean how long did you actually look for these
273 slugs? A. Oh maybe five or ten minutes.

Q. Did you examine the broken headlight carefully? A. I looked at it carefully, yes.

Q. Did you attempt to gather glass from it? A. No, I didn't.

Q. Simply looked at it and saw that it was broken? A. I saw that it was broken.

Q. Did you ascertain that it was broken by a bullet? A. Well, I advised the Chief Hulon Simmons about it, and that is all I did about the light.

Q. Did you examine the 38 caliber revolver when you found it? A. I looked in it. I unbreached it, and looked in it.

Q. Did you smell it? A. Yes, I smelled it.

Q. Had it been fired? A. It appeared to have been fired.

Q. Did you smell smoke? A. I don't remember if I smell smoke or not, but it did appear to have been fired. It seemed to have a little smell to it.

Q. So, it had been fired very recently? A. It could have been fired, and probably was fired.

By the Counsel: We tender the witness.

Mr. Yokum:

Q. Mr. Rispone what would be the occasion of picking up glass out of the headlight of a car that was shattered? A. What would be the occasion?

By the Counsel: Yes, why would you do that? A. Well, I would match it with other parts of the vehicle—

274 Q. Now, there was no wreck or accident involved with this vehicle? A. No sir.

Q. There wasn't anything that would have caused you to gather that particular evidence, was there? A. No.

Mr. Pierson:

Q. Mr. Rispone, isn't it possible that had you gathered the glass from the headlight and turned it over to the Crime Lab they could have determined whether the glass had been broken by gunshot or by a rock? A. If you are asking me if it would be possible, I say yes.

Mr. Pierson: Have no further questions.

By the Court: That is all.

By the Court: Retire the Jury for Noon recess.

Later:

Asst. D.A. Yokum: Let the record show that the Defendant is present in Court represented by Counsel.

By the Court: Let the record show that both the District Attorney and the Counsel for the Defendant waive the polling of the Jury.

Asst. D.A. Yokum: We call Mr. Hulon Simmons.

By the Court: Mr. Simmons you have been sworn

275 in this case and remain under oath.

Q. Officer Simmons, did you have occasion on or about October 7, 19[illegible]6 investigate the alleged killing of Albert Young? A. I was in on the investigation, yes sir.

Q. From who did you receive a call? A. Deputy Vincent Rispone.

Q. Where did you go after you received the call? A. To Hammond.

Q. With whom? A. Went to Hammond by myself.

Q. Did you meet anybody in Hammond? A. I met Dy. Rispone.

Q. Did you and Dy. Rispone go anywhere? A. We did.

Q. Where? A. We went to Ponchatoula, and out from Ponchatoula and met Officer Hebert and picked up Wayne Turner and Shirley Turner.

Q. Is Wayne Turner in the Courtroom? A. He is.

Q. Point him out to the Court and the Jury. A. That is he setting on the left of Mr. Mentz.

By Mr. Yokum: Let the record show that the Witness pointed out the Defendant.

Q. Is there any difference in his appearance to-day and on October 7, 1960? A. There is.

Q. And what difference is there? A. He has lost considerable weight.

276 Q. Where was the defendant when you picked him up? A. He was sitting in Officer Hebert's car in the back seat with Shirley Turner.

Q. What if anything did you do after you picked him up? A. When we walked up to the car Wayne Turner said, "I am the man you are looking for." I told him to come on and get in the car with us, and he and Shirley got in my car and Dy. Rispone brought us to Hammond and transferred Shirley Turner into Sheriff Sanders' car and then we carried Wayne Turner, and he directed us out on the old Hammon-Baton Rouge Highway where he said that he he had left some things in the woods.

Q. Did he accompany you? A. He did.

Q. Did he point out the spot? A. He did.

Q. Did you hear the testimony of Captain Heard this morning? A. I did.

Q. Was Captain Heard in the group? A. Captain Heard was present when he pointed it out.

Q. Do you recall seeing Captain Heard pick up the clip out of the small pistol? A. I do.

Q. After this material was gathered what did you do then? A. We brought Wayne on to Amite.

Mr. Yokum: Your Honor, please on question of the admission of the statement that, we know, will have to be done out of the presence of the Jury, before we get into that would you prefer to have the Defense cross-

277 examine him now, and when we get into the question of the statement we can retire the Jury at that time, or would you prefer to have the Defense cross-examine him after all the testimony?

By the Court: I will leave that up to the Counsel. Would you rather cross-examine him now, or wait until the testimony is completed?

Mr. Pierson: I will cross-examine him now on what he has testified.

By the Court: All right.

Mr. Pierson:

Q. Dy. Simmons you said that Wayne Turner pointed out the spot where he hid the stuff? A. Well, it wasn't exactly hidden. It was out in the woods under a tree, a big pine tree.

Q. In fact, it was scattered all over the ground, wasn't it? A. Within two or three foot area.

Q. It was not hidden? A. It was hidden to the point that it was out in the woods.

Q. But I mean there had been no attempt obviously to hide the stuff? A. Well, I don't know what you term as hiding it?

Q. Well, I mean it wasn't stuck under a bush or buried, or . . . A. Covered up with sacks, no.

By the Counsel: We tender the witness.

Mr. Yokum: Your Honor, please we would like to ask that the Jury be retired.

By the Court: Retire the Jury please Mr. Sheriff.

278 **Renewal of Motion for Mistrial**

Mr. Pierson: Your Honor, at this time the Defense would like to renew the previous motion for a mistrial with reference to this witness also. Obviously throughout the course of this trial Deputy Simmons has handled the Jury, has seen to their comfort and their needs, and for this specific reason we again move for a mistrial.

By the Court: Well I think for the record Mr. Pierson, we will examine Deputy Simmons on that point now.

Mr. Pierson, continuing:

Q. Dy. Simmons have you been with the Jury during the course of this trial? A. I have been with them, yes sir.

Q. On how many occasions, do you know? A. I can't answer that.

Q. A number of occasions? A. I have been with them or around them throughout the trial.

Q. Speaking to them about various and sundry matters? A. Yes sir.

Q. Have you ever discussed this case with any one of them? A. No sir.

Q. But you have spoken to them? A. I have talked to them, yes sir.

Q. Made the acquaintance of some of them? A. I knew most of them.

Q. But, you have made new acquaintances? A. I would say yes. One or two that I didn't know.

Q. Do you get along well with the Jury Members? A. I try to get along with everbody.

279 Q. There has been no friction in your relationship during these last two days? A. Not as far as I know Sir.

Q. Have you stayed here any night and watched over the Jury? A. No sir.

Q. Have you had several meals with the Jury? A. I have had at least two meals with them.

Q. Sitting at the same table with them? A. That is correct.

Q. You have ridden in automobiles with them to and from the restaurant? A. I have.

Q. Dy. Simmons you are the Chief Deputy? A. Chief Criminal Deputy, yes sir.

Q. As such you have a position superior to the other Deputies on the Staff? In other words, are you considered the boss or the supervisor, or the superior of the other Deputies? A. I make an effort to supervise them, yes sir.

Q. That is your job? A. That is my job.

Q. In the conduct of the Jury is it not true that you have been in charge of this? A. Yes sir, I would say so.

Q. You are the Chief Deputy Sheriff handling the Jury? A. Yes sir. I designate certain Deputies to do certain things with the Jury.

Q. And some of the things you do yourself? A. That is correct.

By the Counsel: We rest Your Honor.

280 By the Court: Do you want to cross-examine on this?

Mr. Yokum: I have a few questions, if your Honor please.

Mr. Yokum:

Q. Dy. Simmons you heard the testimony this morning of Dy. Rispone with regard to the one Juror who came back in the car with you and with him? A. Yes sir.

Q. Will you explain to the Judge how it happened that one Juror came back with you and the other Deputy? A. Well, when we go out to Ardillo's to eat someone has to sign the ticket, and it happened yesterday that I went up to the front to sign the ticket and told them to wait for me, and when I got out of there all the other Jurors had loaded in the other cars and there was one waiting, and I told him to get in the car with me.

Q. Dy. Rispone had stayed with him while you were signing the ticket? A. Yes sir.

Mr. Pierson: Was Dy. Rispone alone with that Juror? A. No sir.

Mr. Yokum: continuing:

Q. In other words the separation was one of circumstance? A. That is correct.

Q. Have you at any time during the conduct of this trial had any conversation with any Juror with respect to any portion of this case? A. No sir. I have not.

Q. To the best of your knowledge has Dy. Rispone in your presence, had any conversation with regard to

281 this case? A. To my knowledge he has not.

Q. Or any part of it? A. No sir.

Q. Have either of you made any suggestion of any kind to the Jury Members with regard to the case? A. No sir.

Q. Have either of you, or anybody in your presence, made any comments of any kind about the case? A. No sir. I have no interest in it.

Mr. Yokum: That is all.

By the Court: Do you have anything further, Mr. Pierson?

Mr. Pierson: Just one thing.

Mr. Pierson:

Q. You did state that in your official position you are in charge of the Jury more so than the other Deputies? A. I said that I am in charge of seeing that someone is with them and that they are provided for. I did not say that I am with them more than any other Deputy.

Q. As much as? A. I won't say as much as, because I try not to spend the night with them.

Q. But you have spoken with them on various occasions? A. I went to eat lunch with them on at least two occasions, yes sir.

Q. What Deputy has spent the night with the Jury? A. Deputy McWilliams and Deputy Johnson.

Q. Did Deputy Rispone spend the first night with the Jury? A. No sir.

By the Counsel: Tender the witness.

282 By the Court: Dy. Simmons during the time that you have associated with the Jurors have you ever heard one discuss this case in any way? A. No sir. The case has not been mentioned in my presence while I was around the Jury either by the Deputies, or the Jurors.

By the Court: That is what I wanted to know.

By the Court: Same ruling Mr. Pierson.

Mr. Pierson: Same objection, Your Honor. I ask that the testimony be made part of this record.

By the Court: All right.

Mr. Yokum:

Q. Mr. Simmons on or about October 7th, 1960 did you have occasion to speak with the Defendant, Wayne Turner with regards to the facts of this case? A. Yes, I did.

Q. Did he make any statement to you? A. He did.

Q. Will you tell me how these statements were made? A. Well, I will tell you this way, after arriving in Amite with Wayne Turner I carried him in the office and talked to him at length about the circumstances surrounding the whole incident. After we went through it I asked him if he would like to make a statement and sign a written statement. He said that he would, and at that time Mrs. Watson was called in and a statement was taken.

Q. Now, who is Mrs. Watson? What is her full
283 name? A. She is Deputy Corinne Watson. She is an employee of the Sheriff's office—works in the office.

Q. Who was present at the taking of this statement? A. She and I.

Q. And the Defendant? A. And the Defendant.

Q. The Defendant Wayne Turner, the one you have identified? A. That is correct.

Q. Did she take it down in shorthand? A. She took it down in shorthand and then transcribed it, yes sir.

Q. After it was transcribed did you see the statement again? A. I did.

Q. And what happened to it then? A. At that time in the presence of Wayne Turner, Arthur Ricks, Mrs. Watson and myself the statement was read to the Defendant.

Q. It was read to the Defendant? A. Yes sir.

Q. Did he have any changes, or did he make any objections to the statement as it was read back to him? A. He did not.

Q. Did he sign the statement? A. He did.

Q. Did he sign it in your presence? A. Yes sir.

Q. Was the statement witnessed by you? A. Yes sir.

284 Q. In the presence of the other two witnesses? A. In the presence of the other two witnesses.

Q. In all the time of the making of the statement by him to you and in the making of the statement in the presence of the Stenographer, and in the intervening period, or prior thereto, were any offers of leniency made to him, the Defendant? A. No sir.

Q. Was he coerced in any manner? A. No sir.

Q. Or threatened? A. No sir.

Q. Or beaten? A. No sir.

Q. Were all the statements made by him freely and voluntarily given? A. They were.

Q. I hand you a document.

Colloquy Between Court and Counsel

Mr. Mentz: If the Court please may we ask at this time that an objection be entered as to this statement, and we ask also that the ruling of the Court be reserved upon

this objection until such time as the Court hears the psychiatrists on the question as to whether this man is mentally competent to have made a confession. We ask that the objection be entered and that the Court reserve its ruling as to whether it is admissible until after the psychiatrists testify.

Mr. Yokum: Your Honor, please, may I make a statement at this time?

By the Court: Yes, you may.

285 Mr. Yokum: Considering the fact that under the law the State has to put on evidence first, and considering the fact that this matter has to be taken up before you out of the presence of the Jury to determine whether or not it was freely and voluntarily given, and considering the fact that the psychiatrists will not take the Stand until after the State's case is closed I don't believe that you can comply with that. If he wants to note his objection to the statement with the reservation, or with the right to have the Jury find out from the psychiatrists whether he is mentally competent that will be a different story, Your Honor.

By the Court: I think that your objection goes to the weight rather than to the admissibility Mr. Ment. –to the weight to be given to the evidence rather than to the admissibility. As long as it is freely and voluntarily given without any duress or promises of award for exchange, it meets the requirements of the law. I think that if the man is not mentally competent to make such a confession at the time, and if that is part of your defense that it will go to the weight that will be given to that confession by the Jury when it is considering this case. If you want to make an objection you can make it, but I will overrule it at this time.

Mr. Mentz: If the Court please we would like to make this objection and ask that the testimony of the phychiatrists be made a part of the Bill of Exception.

By the Court: No, I am afraid that I could not let you let the testimony of the psychiatrist be made a part of the Bill of Exception in view of the fact that it has not at this time been introduced. It will be a part of the record in the case, but it can not be part of the Bill of Exception.

The basis upon which you are making your objec-
286 tion can be made a part of the Bill of Exception.

Mr. Mentz: Then the objection would be that the Defendant has made a plea of not guilty by reason of legal insanity and under those circumstances be believe that he is incompetent to have freely and voluntarily given the confession as is contended by the prosecution.

By the Court: I am going to overrule the objection on the grounds that that goes to the weight to be given to the evidence rather than to its admissibility.

Mr. Mentz: Let a *Bill of Exception* be reserved.

By the Court: All right. Let the record reflect that.

Mr. Yokum: Continuing:

Q. Dy. Simmons I hand you a document consisting of four legal size sheets and ask you if you can identify the signature of the top witness on the left hand side of that sheet?

Mr. Mentz: If your Honor please the document has not been shown to the Defense Attorneys yet.

Mr. Yokum: I thought you had a copy of the document. I would like for the record to show that no request has been made prior hereto for a copy of the statement, or to see the statement.

By the Court: Let the record reflect that.

Mr. Yokum, continuing:

Q. Mr. Simmons I hand you a document described a moment ago and ask you if that is your signature as the first witness in the lower left hand corner of the fourth sheet of the document? A. It is.

Q. The signature on the right, did you see Wayne
287 Turner sign that? A. I did.

Q. That is the signature he affixed to this document? A. That is correct.

By the Counsel: That is all.

Mr. Pierson:

Q. Dy. Simmons, was that the only copy made? A. No sir. I am sure that it is not because we always make three copies.

Q. The original and three copies or the original and two? A. The original and two.

Q. Where are the other copies? A. I don't know. We keep one in our file and furnish the District Attorney with one.

Q. Was the document read to Wayne Turner before he signed it? A. Wayne read it himself.

Q. He read all three copies of the statement? A. No sir. He just read one copy, but he signed all three copies.

Q. Do you know that is the copy he read? A. He read the original and I think this is the original copy.

Q. Was the copy given to the Defendant? A. For him to read?

Mr. Pierson: No, for him to keep. A. No sir.

Q. Are you sure that that is the copy that he read? A. Reasonably sure, yes sir. This looks to me like the
288 original.

Q. How did Mr. Turner appear at the time he gave you this statement? Did he appear at the time to be tired? Sleepy? Hungry? A. That was the first time I had ever seen Mr. Turner and it would be hard for me to determine what kind of shape he was in. He acted normal.

Q. He did act normal? You couldn't tell if he was sleepy? A. No sir.

Q. In the wording of the document Mr. Simmons, are the words used those of the Defendant, throughout the document? A. No sir.

Q. Who worded the document? A. The first paragraph of the document is a form which is used in every statement taken, the last paragraph is a form that is used by the Sheriff's office in every statement taken. The latter part of the statement is in question and answer form. The questions are in my words, and the answers are Wayne Turner's. The rest of the statement is his.

Q. Starting at the beginning of the second paragraph "My name is Wayne Turner, etc. etc. . . ." those were his words? A. Yes sir.

Q. You did not coach him at all on that? A. Well, I made the statement that we went through the entire thing before and I explained to him what kind of statement we wanted and basically how to go about that—we wanted his name, his age and everything else.

Q. And then he sat there and dictated the statement as it appears? A. Yes, sir—up to the questionnaire.

289 Q. You didn't reword some of the sentences that he gave you? A. I would say No Sir.

Q. You didn't leave out some of the things he said? A. No sir. I didn't take it down, Mr. Pierson. If there was anything left out it would be left out by the Stenographer. When he read it he signed it.

Q. Did you advise Mr. Turner prior to taking the statement that he did not have to give one? A. Yes sir.

Mr. Pierson: Your Honor, we object to the Statement on the grounds that . . . .

Mr. Yokum: Your Honor, at this time the Statement has not been offered in evidence as yet.

By the Court: Wait until the Statement is offered, Mr. Pierson.

Mr. Pierson: Before the Jury, Your Honor?

By the Court: I am going to rule on the admissibility before the Jury comes back in.

Mr. Pierson: You are going to make that ruling affirmative?

By the Court: Before the Jury comes back in I am going to rule on whether or not I am going to allow it into evidence. We will have to go through this whole examination after the Jury comes back in.

Mr. Yokum, continuing:

Q. This document you testified about is that the original of the Statement? A. I would say that it is the original. It looks to me like the original, yes sir. Let me look at that one. Yes sir, this is the original.

Q. What is this notation? A. "Read and signed in Jailer's office on 10-8-60 at 9:45 A.M. C.W."

290 Q. Who is C.W.? A. Corinne Watson.

Mr. Yokum: That is all.

Asst. D.A. Yokum:

Call Mrs. Corinne Watson, please.

Mrs. Corinne Watson, witness, after being duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. State your name for the record, please. A. Corinne Watson.

Q. What was your official position October 7th and 8th of 1960? A. Dy. Sheriff, Stenographer for the Sheriff's Office of Tangipahoa Parish.

Q. Did you have occasion on that date to take down the statement of Defendant, Wayne Turner? A. I did.

Q. Is he in the Courtroom now? A. Yes.

Q. Will you point him out? A. Sitting there.

Mr. Yokum: Let the record show that the witness pointed out the Defendant, Wayne Turner.

Q. How was the statement made, taken down? A. I first took the Statement in shorthand, and typed it later.

Q. Were you present during all the taking of the
291 Statement here? A. Yes.

Q. Did you type it up later? A. Yes.

Q. Then what did you do with it? A. Later I carried it upstairs to the Jailer's Office.

Q. Did Mr. Turner read this Statement? A. Yes sir. He read it himself.

Q. After he read it did he make any corrections, or any objections in the manner it was written? A. No sir.

Q. I show you a document of four pages and ask you if this is the signature of Wayne Turner at the lower right hand side of sheet four? A. Yes.

Q. Was that signature affixed in your presence? A. Yes, it was.

Q. Did the other witnesses sign in your presence also? A. Yes sir.

Q. Did you sign it as a witness? A. Yes sir.

Q. Is that your signature as the second witness? A. Yes, it is.

Q. Now, during all the time that the statement was being taken was any force used on the Defendant? A. None whatsoever.

Q. Were any promises made to him? A. No sir.

Q. Could you say that the Statement was freely
292 and voluntarily given? A. Yes sir, it surely was.

Q. Was he threatened in any manner? A. No sir.

Mr. Yokum: Tender the witness.

Mr. Pierson:

Q. Were you present when the Defendant was advised of his rights? A. No sir.

Q. You were not present? A. No.

Q. Did you take down on your shorthand pad during the interview in question every word that was said, or did you take down just the important points that you may have thought important, or that one of the Deputies told you to take down? A. I took down every word that was said.

Q. And when you transcribed it, did you transcribe every word? A. Yes sir.

Q. And did you take down everything on your shorthand pad concerning the Defendant being advised of his rights? A. No sir. That first paragraph of the Statement appears on every Statement.

Q. The same paragraph is used? A. Yes.

Q. And it wasn't actually said at that time? A. No sir.

Q. You mean to tell me that the Defendant sat
293 down and dictated this thing to you as it appears in this Statement . . . word for word . . . that you did not leave out any words? A. To the best of my knowledge of shorthand I did not leave out anything he said.

Q. You are aware of course that the Statement as it appears here follows in logical order, is well composed, you probably noticed that as you were typing it, is that correct? A. Yes, I would say that.

Q. And it is your testimony that the Defendant sat there and dictated it in the manner it appears here? A. Yes.

By the Counsel: No further questions, Your Honor.

Mr. Yokum: That is all for the present time.

Asst. D.A. Yokum:

Call Arthur Ricks.

Arthur Ricks, witness, after being duly sworn to tell the truth, the whole truth and nothing but the truth testified as follows:

Q. State your full name for the record, please. A. Arthur Ricks.

Q. What was your official position on October 7th, and 8th, 1960? A. Jailer, Tangipahoa Parish.

Q. Did you have occasion on or about October 8th, 1960 to witness the Statement signed by the Defendant Wayne Turner? A. I witnessed the signing. I don't know what date it was.

Q. I hand you a document here consisting of four legal size pages, and ask you if that is your signature at
294 the bottom left? A. Yes.

Q. Did you see the Defendant, Wayne Turner, sign this? A. Yes sir.

Q. Was that signed in the presence of Corinne Watson, and Hulon Simmons? A. Yes sir.

Q. Were you present when this was read to him? A. I was present when he read it.

Q. Did he read it? Did he read the entire document? A. Yes sir.

Q. After he read it did he make any objection to any part of it? A. No sir.

Q. Did he ask that any part of it be changed? A. No sir.

Q. During the time that you saw him and witnessed his reading of the document was any force, or duress or threats made upon him in your presence? A. No sir.

Q. Was he offered anything to sign it? A. No sir.

Q. Was any pressure of any kind put on him? A. No sir.

Q. To the best of your knowledge, did he sign this voluntarily? A. Yes sir.

Mr. Yokum: Tender the witness.

Mr. Pierson:

Q. Mr. Ricks, were you present when the Defendant was advised of his rights? A. No. I was only present at the reading and signing of this Statement.

295 Q. How did the Defendant appear to you at that time? Did he appear tired? A. Well, I don't guess.

Q. You don't guess, or you don't know? A. I don't suppose he was tired?

Q. Do you know, or are you guessing? A. I guess I would be guessing—I don't know.

Q. You actually don't know? A. No, I don't.
By the Counsel: No further questions.

Mr. Yokum:

Q. Mr. Ricks have you had any occasion to remember a small fact like that for nearly two years? Whether he was tired or not? A. No, I don't. The best I can remember it was done in the early part of the morning, or the middle part of the morning I would say—no work going on, or nothing going on yet.
Mr. Yokum: That is all.

By the Court: Anything else Mr. Pierson?
Mr. Pierson: That is all Your Honor.

By the Court:

Mr. Ricks how did the Defendant look? A. Well, he looked like he always has to me.
Q. From your observation of him did he give you the impression of being tired, or disturbed in any way? A. Judge, I don't think so. He could have, but . . .
296 Q. Did he appear to be unduly nervous? A. No Sir.
By the Court: That is all I wanted to ask.

Mr. Yokum: Your Honor we submit that the Statement was freely and voluntarily given by the Defendant.
Mr. Pierson: We would like to call the Defendant for the limited purpose of showing that the Statement was not so given.
By the Court: All right, put him on.

Wayne Turner, Defendant, after being duly sworn to tell the truth, the whole truth and nothing but the truth testified as follows:

Mr. Pierson:

Q. Wayne, do you remember the night the Statement was taken? A. I remember the morning it was taken.

Q. Morning, excuse me. At the time it was taken how long had it been since you had eaten anything? A. Approximately 48 hours.

Q. Approximately how long had it been since you had slept? A. Same amount—48 hours.

Q. Had you been separated from your wife since shortly after you were arrested? A. Yes sir.

Q. You had not seen her? A. No sir.

Q. You did not know where she was? A. No sir.

Q. How much money did you have in your pocket
297 at the time you were arrested? A. I don't believe a penny.

Q. Did you have a job? A. No sir.

Q. Any prospects of a job? A. No sir.

Mr. Yokum: Your Honor please now he is going into things here that are irrelevant to the admissibility of this Statement.

By the Court: Mr. Pierson, what is the purpose of this questioning?

Mr. Pierson: To show the state of mind of the Defendant.

By the Court: The question here is whether or not this Statement was freely and voluntarily given without any force, threats or promises or duress of any kind. His state of mind is not relevant in the absence of those facts. Question him on that point.

Mr. Pierson: I think it bears on his response to questions.

By the Court: That is not a question before the Court right now. It is a question for the Jury; that is to be entertained on the merits of the case. It is a problem for the Defense. It has nothing to do with the admissibility of the Statement.

Mr. Pierson: Is it permissible to call the Defendant before the Jury for that limited purpose?

By the Court: No, it will not be permissible to call the Defendant before the Jury for that limited purpose, Mr. Pierson. Once he is on the Stand he can be cross-examined as to the entire case.

Mr. Pierson: In that case we object to the ruling of the Court and *reserve a Bill.*

298 Mr. Pierson, continuing:

Q. Wayne, were you advised of your rights? A. I can't remember of ever having been advised of my rights. That is my legal rights.

By the Counsel: May we approach the Bench, Your Honor?

By the Court: Yes.

Later:

Mr. Pierson, continuing:

Q. Were you explained what your legal rights were? A. I don't believe so.

Q. Just before you signed the Statement did you ask anyone what that first paragraph meant? A. I remember on the morning that I read the Statement I asked what the first paragraph meant, and I don't remember who—I believe it was Mr. Simmons who said it didn't mean anything in particular, just to go ahead and sign the Statement.

By the Counsel: No further questions.

Asst. D.A. Yokum:

Q. Mr. Turner when did you first tell Dy. Simmons the facts of this case? A. It was the morning that they brought me in here.

Q. About what time was it? A. I could not tell you that. I do not know.

Q. Did you sign the Statement the same day that it was given? A. No, I believe it was the next day.

Q. In other words you slept between the time that
299 you gave the Statement and the time you signed it?
A. No, I didn't sleep at all.

Q. Why? A. I couldn't.

Q. What I mean by that—you weren't questioned all day long? A. No sir.

Q. How much of a period of time elapsed approximately between the time you told Mr. Simmons the facts and they were taken down by the Stenographer and the time that they brought it back to you and you read it, and signed it

A. All I can tell you Sir the next day. Sometime from one morning to the next morning.

Q. But there was a space of nearly a day between the giving of it, and the signing of it? A. I would say—not a full day.

Q. Well, let's say a full night? A. A full night, yes sir.

Q. You gave it one morning before noon, say and you signed it the next day? A. It could have been afternoon. I cannot remember that.

Q. Now, did you read that entire Statement? A. I read it more or less just glancing over it . . . I read it as good as . . .

Q. How much education have you had? A. Approximately a high school education.

Q. High School? A. Yes sir.

300 Q. You are fully capable of reading and understanding the English language? A. Yes sir.

Q. Did you make any objections or any statements that you wanted to have something corrected in this before you signed it. A. The only statement that I made at that time was that I would like to see my wife, and she was brought in from the cell into the room where the Statement was being signed, and I asked her at that time how she was, and—I wasn't worried about the Statement I was worried about my wife.

Q. I hand you this document and ask you if that is your signature at the lower right hand corner of Page No. 4? A. Yes sir, it is.

Q. You signed that? A. Yes, I did.

Mr. Yokum: That is all.

By the Court:

Q. Mr. Turner did Deputy Simmons make any promises to you for awards or benefit in connection with your giving, or signing this Statement? A. No sir.

Q. Did he threaten you in any way? A. No sir.

Q. Was the Statement given under conditions which might be conducive in placing you in a position of fear or apprehension for your safety? A. No Sir, I could not say that.

By the Court: That is all.

301 Mr. Mentz:

Your Honor, we would like to call Mr. Simmons for just one or two more questions.

By the Court: All right Mr. Simmons:

Mr. Mentz:

Q. Mr. Simmons just to clear this up, do you recall apprising the Defendant of his rights at the time this Statement was taken? A. I told Mr. Turner that he did not have to make any statement.

Q. What other rights did you advise him of Mr. Simmons? A. Just what is at the head of that Statement, his right of Counsel, and that the Statement he made could be used against him.

Q. Did you explain to him those things when you took this Statement? A. I did not go into detail, no.

Q. Now, Mrs. Corinne has testified that she does not recall it in the portion that she took down in her notes, could it be that what you are mentioning was done before Mrs. Corinne got there? A. I am sure that it was . . . 'cause Wayne and I talked at length for some hour or more before Mrs. Watson was called in. When Mrs. Watson was called in he was ready to give a Statement.

Q. But at the time the formal taking of the Statement was done and the Stenographer got there at that time he was not explained anything pertaining to his right to Counsel or his right not to give a statement etc.? A. If Mrs. Watson says that it wasn't—it wasn't.

Q. The Secretary says that it was not in her notes
302 that she took in Shorthand. A. She is probably correct.

Mr. Mentz: That is all.

Mr. Yokum: That is all.

Mr. Yokum: We submit the statement as voluntarily and freely given Your Honor, subject to the ruling of the Court.

Mr. Pierson: We object Your Honor. Well actually Your Honor, we are objecting to the ruling of the Court

that the Defendant was not allowed to testify as to his state of mind at the time he signed the Statement.

By the Court: You already have a Bill on that, haven't you? You are not going to object on my ruling of the admissibility of the confession on the grounds which I stipulated as proper legal grounds, is that right?

Mr. Pierson: We would like to object to it on the grounds that the Defendant was not properly apprised of the legal rights.

By the Court: I will overrule that objection.

By the Counsel: To which ruling of course we *reserve a Bill.*

Jury Returned to the Courtroom.

Asst. D.A. Yokum:

Q. Dy. Simmons did you have occasion on or about October 7th to take a statement from the Defendant, Wayne Turner? A. I did.

Q. How was the Statement taken? A. It was taken in Shorthand by Mrs. Watson.

303 Q. What is her full name? A. Mrs. Corinne Watson.

Q. And what was done then? A. It was transcribed and and brought back the next day for the Defendant to sign.

Q. Were you present from the beginning to the end of the Statement in this case? A. I was.

Q. Were you present when he signed it? A. I was.

Q. I hand you a document of four legal sheets and ask you if that is your signature shown on the left hand side, the first witness? A. It is.

Q. Did you see Wayne Turner sign this Statement? A. I did.

Q. Is that his signature at the lower right hand side? A. It is.

Q. Did you see Mrs. Watson sign it? A. I did.

Q. Did you see Arthur Ricks sign it? A. I did.

Q. During the entire taking of this Statement were any promises made to Wayne Turner? A. No sir.

Q. Was he threatened in any manner? A. No sir.

Q. Was he given any hope of reward for making the Statement? A. No sir.

Q. Was any pressure of any type used upon him
304 to obtain the Statement? A. None whatsoever.

Q. You say then that the Statement was freely and voluntarily given? A. Definitely so.

Q. One other question, that is the original of the document that was signed by Wayne Turner and the witnesses testified to? A. That is the original.

Mr. Yokum: That is all.

Mr. Pierson:

Q. What was the appearance of the Defendant at the time you took the Statement, Mr. Simmons? A. Normal.

Q. Did he look tired? A. That was the first time I had ever seen Mr. Turner and it is hard for me to state what state of mind he was in or how he felt. To me he appeared normal.

Q. Was he in the company of his wife at that time? A. At the time the Statement was taken?

By the Counsel: Yes.

A. No sir.

Q. Does the Statement as it appears now conform word for word as to the words spoken by the Defendant? A. The first paragraph of the Statement is a form used by the Sheriff's office in taking all statements. The last paragraph is also a form. The latter part of this Statement is in question and answer form. The questions being in my words, the answer in Turners. The rest of it is in his words.

305 Q. Mr. Simmons do you know what a leading question is? A. No sir.

Q. In the latter part of this document where you were asking the questions and the Defendant was giving the answer, did you in fact lead the Defendant into the answers you wanted? A. I just stated I don't know what a leading question is. I asked the questions as they are here, and he answered them.

Q. Did you not word some of those questions in such a way that no matter which way they were answered they

would be incriminating? A. I don't think so. Not intentionally.

Q. That is what a leading question is. Did you not sometimes ask long questions to which the Defendant would answer a simple yes or no. A. I would say that I asked questions of probably two sentences and he would answer by yes or no.

Q. So, that actually part of this confession was your words, is that it? A. None of the confession is my wording. The questions in the Statement are my wording—the answers are his.

Q. I notice that in the question part you cover the actual event surrounding the alleged crime, is that correct. The actual motions of the crime? A. In the question-answer form?

By the Counsel: Yes.

A. Generally.

Q. And the question are actually statements formed and worded by you, is that correct? A. I was asking the questions.

306 Q. The questions to which a simple yes or no would have been sufficient? A. I would say some of them could be answered yes or no.

Q. Deputy Simmons I call your attention to the second to the last question on the last page of this document and ask you if that is a question or a statement? A. I would say that was a question.

Q. Is there a question mark after it. A. There is a period there.

Mr. Pierson: Your Honor please has this been admitted so that I can read a part of it?

By the Court: Yes, it has been admitted, yes.

Mr. Pierson: I would like to read you that second to the last question Deputy, "Now when you drove up to the station and told this man this is a hold-up, you fired your pistol three times and was leaving the place before he fired at all." Is that a question Deputy Simmons? A. I meant it as a question.

Q. Why did you not simply ask the Defendant what happened and let him make the statement in his own words? A. I did it how I thought was right, Mr. Pierson.

Q. The question-answer portion of this document does cover generally the actual motions of the alleged crime, is that correct? A. I would say generally.

Q. And you worded the questions? A. I worded the questions.

By the Counsel: Tender the witness.

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307 Asst. D.A. Yokum:

Q. Mr. Simmons did you have any aim other than to get the truth out of the Defendant? A. None whatsoever.

Q. Do you have any interest in this case, other than the usual interest as Deputy Sheriff? A. No sir.

Q. You have no animosity at all toward the Defendant, Wayne Turner? A. None whatsoever.

Q. When the Statement was read by the Defendant, did he read the entire Statement? A. Yes.

Q. Did he make any objections to it? To any part of it? A. No sir.

Q. Did he ask that any part of it be corrected or changed? A. He did not.

Mr. Yokum: That is all.

Mr. Pierson: That is all, Judge.

Asst. D.A. Yokum: Call Mrs. Corinne Watson.

Q. Mrs. Watson for the purpose of informing the Jury, what was your official position as of October 7th and 8th of 1960? A. I was Deputy Sheriff and Stenographer for the Tangipahoa Parish Sheriff's Office.

Q. Did you have occasion on October 7th, 1960 to take down the Statement of Wayne Turner, the Defendant?

A. I did, yes.

308 Q. Is he in the Courtroom? A. Yes sir.

Q. Would you point him out to the Gentlemen of the Jury? A. He is sitting next to Mr. Mentz.

Mr. Yokum: Let the record show the Witness pointed out the Defendant, Wayne Turner.

Q. Now would you tell the Gentlemen of the Jury in your own words exactly what you remember about taking the Statement? A. I took the Statement in shorthand and later typed it.

Q. Who typed it up? A. I typed it.

Q. Now who was present when you actually took the Statement? A. Dy. Simmons, myself and of course the Defendant, Mr. Turner.

Q. When was it signed? A. It was signed the following morning, October 8th.

Q. Who was present when it was signed? A. Dy. Simmons, Dy. Ricks and myself.

Q. Did you see the Defendant, Wayne Turner, affix his signature to this document? A. Yes, I did.

Q. Is that his original signature on that document, on the lower right hand portion of Page 4? A. Yes.

Q. Is that your signature as a witness, to the left of his? A. Yes.

Q. Did Arthur Ricks and Hulon Simmons sign also in your presence? A. Yes, they did.

309 Q. In all the time in taking down this Statement and during the time the Statement was read back to the Defendant, or any other time that you remember was any threats used on this Defendant? A. No sir.

Q. Was he promised anything for signing this Statement? A. None whatsoever.

Q. To the best of your knowledge was that Statement freely and voluntarily given? A. Yes sir.

Q. Was this the original Statement of the Statement you typed up yourself? A. Yes.

Q. All four sheets of it? A. Yes, that is the original.

Mr. Yokum: Tender the Witness.

Mr. Pierson:

Q. Mrs. Watson, were you there—were you in the presence of the Defendant during the entire interrogation, or were you called in just at the last moment to take his Statement? A. I was called in at the last moment.

Q. Then you actually don't know whether threats were used, or promises made, is that correct? A. No, other than no threats or promises were made in my presence to the Defendant.

Q. Was the Defendant advised of his legal rights in your presence? A. Not in my presence.

Q. Did Deputy Simmons tell you to put the lead paragraph on the Statement, or did you do that as a
310 matter of course? A. I did it as a matter of course. The lead paragraph and the last paragraph.

Q. Well, you don't know whether that actually happened or not? A. No, other than they are usually advised of their right of counsel.

Q. But you just typed that paragraph on there because you always did it, is that right? A. Yes.

By the Counsel: That is all.

Mr. Yokum:

Q. Mrs. Watson, was that paragraph there when the Defendant was ready to sign it? A. Yes sir.

Q. Was that Statement as typed up by you to the best of your knowledge as close as humanely possible to cover what was said in your presence and taken down by you? A. Yes sir.

Q. And typed up by you? A. Yes sir.

Q. You have no animosity of any kind toward the Defendant? A. None whatsoever.

Mr. Yokum: That is all.

By the Court: That is all Mrs. Watson, step down.

Asst. D.A. Yokum:

Call Arthur Ricks to the Witness Stand.

Q. Mr. Ricks what was your official capacity on October 8, 1960? A. Jailer of Tangipahoa Parish.

311 Q. On October 8, 1960 did you have occasion to witness the signing of a document by the Defendant, Wayne Turner? A. Yes.

Q. In your presence? A. Yes sir.

Q. I hand you a document and ask you if that is your signature on the left hand side, Arthur Ricks? A. Yes sir.

Q. Did the other witnesses sign in your presence too? A. Yes sir.

Q. Was this statement read by the Defendant before he signed it? A: Yes sir.

Q. During all the time that you were present on the morning of October 8th, 1960 from the time you got in and the reading and the signing of the Statement were any force or threats made against the Defendant? A. No sir.

Q. Was he promised anything for signing the Statement? A. No sir..

Q. Was that to the best of your knowledge freely and voluntarily given? A. Yes sir.

Mr. Yokum: That is all.

Mr. Pierson:

Q. Mr. Ricks, was the Defendant explained his legal right in your presence? A. I don't know about that.

312 I know that it was stated on the paper to that effect.

Q. Did you hear those rights explained to him? A. I can't remember.

Q. Did you hear the Defendant ask at the time the Statement was signed what that first paragraph meant? A. No sir.

Q. Were you present during the entire interrogation of the Defendant? Or did you come in at the last minute? A. No sir. I only witnessed the reading and the signing of the Statement.

Q. How did the Defendant appear at that time? Did he appear sleepy? A. No sir, I don't think so.

Q. You don't think so, or you don't remember? A. He could have been sleepy.

Q. In other words, you actually don't remember do you? A. No sir.

Mr. Pierson: We tender the Witness.

Mr. Yokum: We have no further questions.

By the Court: That is all, Mr. Ricks.

Offer in Evidence

Asst. D.A. Yokum: Now, if Your Honor please in connection with the witnesses' testimony we would like to offer, introduce and file in evidence the Statement of the Defendant, Wayne Turner, and ask that it be marked State 11.

By the Counsel: I thought it had already been offered.

Mr. Yokum: I want to officially offer it before the Jury.

313 By the Counsel: We object to the offering.

By the Court: Objection overruled.

Mr. Pierson: Your Honor, we object to your ruling on the grounds:

1st: That the Stenographer's record does not show that the Defendant was apprised of his legal rights at the time of the signing of the Statement.

2nd: That the expert testimony will show that he was mentally incompetent to give testimony at that time, or to give such a Statement.

By the Court: Is that the basis for the objection? I overrule the objection and you have already got the Bill on that.

Dist. Atty. Yokum: At this time Your Honor I would like for the Deputy Clerk to read the Statement, or whatever we may call it to the Jury so that they may be apprised of what is in it.

By the Court: All right. Would you go over and sit in the Witness Stand, Mrs. Morrison and read the Statement to the Jury.

Statement of Wayne Turner, Defendant, read aloud in open Court by Mrs. Lucille Morrison, Deputy Clerk of Court.

Asst. D. A. Yokum: The State rests.

. . . . . .

351 Asst. D.A. Yokum:

By the Court: Dr. Ricks you have been sworn in this case and you remain under oath.

Mr. Yokum:

Dr. Ricks, did you have occasion to examine the Defendant Wayne Turner? As far as his mental capacity was concerned? A. Yes sir. I testified to that before.

Q. At any time that you examined him did he exhibit the capacity to distinguish right from wrong? Did he know right from wrong? With reference to his conduct? A. Oh yes . . . yes.

Q. Did he exhibit any abnormal behavior to you of any kind? A. No . . . no.

Q. In your opinion on or about October 7th, 1960 would you say that he had the capacity to distinguish right from wrong? A. Yes . . . yes.

Mr. Yokum: That is all.

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352 Mr. Pierson:

Q. Prior to your testifying in this case had you ever heard the terms sociopathic personality—anti-social type? A. I have heard lots of things—there ain't nothing to.

Q. Had you ever heard that term, Doctor? A. I have.

Q. You have? A. Yes.

Q. Did you know what it meant? A. As much as anybody else. I would say this, you don't have to be a doctor or a physician or a psychiatrist, don't even have to be a doctor, to tell if a man has got good sense or not. I have known numbers of people who never saw inside a medical college—

Q. Dr. Ricks, do you think as a physician that the science of psychiatry is a bunch of "hog wash"? A. Largely, yes.

Q. You do take that position? A. Largely, largely. . . . You say anything you want to, but that is right. You can't see inside a man's brain and tell what he is going to do—all you can do is imagine.

Mr. Pierson: Your Honor, I tender the witness.

Mr. Yokum: I have no further questions.

By the Court: That is all Doctor, thank you.

. . . . . .

Clerk's certificate to foregoing transcript omitted in printing.

371 IN THE SUPREME COURT OF LOUISIANA

No. 46338

STATE OF LOUISIANA

Versus

WAYNE TURNER

Appeal from the Twenty-first Judicial District Court, Parish of Tangipahoa; the Honorable Frederick S. Ellis, Judge.

Opinion—April 29, 1963

HAWTHORNE, J.

Defendant Wayne Turner, charged with murder, was convicted and sentenced to death. He has appealed, relying for reversal on a bill of exception taken to the overruling of his motion for a mistrial.[1]

The bill of exception, signed by the trial judge, discloses that the motion for a mistrial was made under the following circumstances: The State called as witnesses the chief criminal deputy sheriff and another deputy sheriff. One of these witnesses testified as to the free and voluntary nature of the defendant's confession and to certain circumstances surrounding the giving of that confession. The other testified that he was the first officer at the scene of the homicide, gave testimony as to the chain of evidence, pointed out the location of certain articles of incriminating evidence which were introduced by the State, and testified to certain admissions made by the defendant which were admitted in evidence.[2] Counsel for the defendant objected to the testimony of each of these officers and moved for a mistrial on the ground that since these deputies

372 had custody and charge of the jury, they had been in and out of the jury room and mingled with the jury during the three days the trial had been in progress; that the jury had been taken by these deputies in cars to a restaurant some two miles from the courthouse for every

[1] A motion for a new trial based on substantially the same grounds as those of the motion for a mistrial was also overruled.

[2] No contention is made by the accused that the confession and the admissions were not freely and voluntarily made.

meal, and that on one occasion one of the jurors was separated from the others so that he rode the two miles back in the car with the two deputies whose testimony was objected to.

Both of these deputies testified on the hearing of the motion for a mistrial, and upon being questioned by the court they testified, as disclosed by the trial judge's per curiam, "that they had never discussed anything having any bearing on the case with any member of the jury; that they had never discussed the case with each other or other deputies in the presence of the jury; and that they had never heard any aspect of the case discussed by any member of the jury". The trial judge concluded that the accused was not prejudiced.

Appellant makes no contention that any of the jurors in this case were at any time not under the charge of an officer, or that they were not separated from the public. As we understand his contention, it is that two of the deputy sheriffs who had charge of the jury during the trial were also leading witnesses for the State, and that this ipso facto prejudiced the accused and violated R.S. 15:394 which requires that "the jury shall be kept together under the charge of an officer in such a way as to be secluded from all outside communication"; in other words, that contact with these deputies who were also witnesses prevented the jury from being "secluded from all outside communication" within the meaning of the statute.[3] Appellant has not established, or even attempted 373 to establish, any misconduct of any juror or of either deputy sheriff, of any effort to influence the jury or any other act that would be prejudicial.

The rule in this state is that an officer who testifies for the prosecution is not, because of this fact alone, disqualified to have charge of the jury, and that in such cases the

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[3] R.S. 15:394 provides: "From the moment of the acceptance of any juror until the rendition of verdict or the entry of a mistrial, as the case may be, the jurors shall be kept together under the charge of an officer in such a way as to be secluded from all outside communication * * *." As said by this court in State v. Davis, 237 La. 577, 111 So. 2d 778, "The purpose of this section [R.S. 15:394] is to keep the jurors from any outside influence. The separation contemplated is separation from the public or outside contact. State v. Migues, 191 La. 55, 184 So. 540; State v. Sharbino, 194 La. 709, 194 So. 756; and State v. Fuller, 218 La. 872, 51 So. 2d 305."

burden is upon the defendant to show improper conduct, efforts to influence the jury, or any other fact which would prejudice his right to a fair trial. In State v. Oteri, 128 La. 939, 55 So. 582, a capital case decided in 1911, the jury was permitted to attend a theatrical performance and was left in the charge of a deputy who testified for the prosecution. In affirming the conviction this court said:

"It has been held in a number of cases that:

"'The fact that an officer is sworn and testified as a witness does not disqualify him from acting as bailiff in charge of the jury during their deliberations.' 12 Cyc. 670.

"As a matter of law, [the officer] was not disqualified to act as bailiff because he happened to be a witness for the prosecution. • • •

"The evidence shows that the jury did not separate for a moment and had no communication with any one outside of their body. Therefore the accused was not prejudiced by the incident under discussion. We, however, must express our disapproval of the permission given the jury to attend the show, thereby subjecting them to the danger of outside influence. We may add that our ruling would have been different if any prejudice whatever had been shown by the evidence." See also State v. McAllister, No. 46,337 on our docket, which became final on March 21, 1963.

Wharton states the rule thus:

"The fact that the sheriff or his deputy was a witness in the case does not disqualify such person from acting as bailiff in charge of the jury during its deliberation.
374 • • •" 5 Wharton's Criminal Law and Procedure (Anderson's ed. 1957), sec. 2109, footnote 2, p. 290. To the same effect, see also 53 Am.Jur., Trial, sec. 858, p. 625; 23A C.J.S., Crim. Law, § 1352, p. 946; Ann. Cas. 1912C, p. 882; Ann. Cas. 1917B, p. 254.

Cases from other jurisdictions have also recognized the same rule: Gaian v. State, 68 Tex.Cr.R. 200, 150 S.W. 1171 (1912); Holmes v. State, 70 Tex.Cr.R. 214, 156 S.W. 1172 (1913); Newby v. State, 17 Okla.Crim.R. 291, 188 P. 124 (1920); Underwood v. State, 118 Tex.Cr.R. 348, 39 S.W.2d 45 (1931); Hendrix v. State, 200 Ark. 973, 141 S.W. 2d 852 (1940); State v. Hart, 226 N.C. 200, 37 S.E.2d 487

(1946); Odell v. Hudspeth, 189 F.2d 300 (C.C.A. 10th; cert. den. 342 U.S. 873, 72 S.Ct. 116, 96 L.Ed. 656).[4]

The last cited case, decided in 1951, was one from a state district court in Kansas where the defendant had been convicted of first degree murder and sentenced to life imprisonment. No appeal was taken, and the judgment and sentence became final. Thereafter by habaes corpus the defendant applied to the federal district court contending that his conviction had been obtained in violation of the due process clause of the Fourteenth Amendment. Having no success in that court he appealed to the 10th Circuit Court of Appeals. That court said of a contention relevant here:

"* * * The contention that the sheriff, a witness for the prosecution, acting as bailiff and custodian of the jury during the trial would void the judgment, is also without merit. There is no evidence that the sheriff did anything irregular in performing this function. The evidence was to the contrary. * * *"

As we have pointed out, under the jurisprudence of this court unless there is a showing of prejudice, a conviction will not be set aside simply because officers who are witnesses in the case have the jury under their charge.
375 This court is inclined to look upon the practice with disapproval, however, because in such cases there may be prejudice of a kind exceedingly difficult to establish. The practice should be especially condemned where, for instance, the testimony of the officer and that of the accused are in direct conflict and the jury is called upon to weigh the credibility of each, or where the officer is the principal prosecuting witness.

For the reasons assigned the conviction and sentence are affirmed.

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[4] The cases of State v. Tarkington, 72 Miss. 731, 17 So. 768, and U. S. v. Marine, 84 Fed. Supp. 785, relied upon by defendant are not in point. In the Tarkington case the officer-witnesses were with the jury while they were *deliberating* their verdict. In U. S. v. Marine a juror and a prosecuting witness had lunch together and several conversations on the days of the trial; it does not involve officers in custody of a jury.

380 IN THE SUPREME COURT OF LOUISIANA

WAYNE TURNER, *Appellant*

vs. No. 46,338

STATE OF LOUISIANA, *Appellee*

Notice of Appeal to the Supreme Court of the United States—Filed July 11, 1963

1.

Notice is hereby given that Wayne Turner, the Appellant above named, hereby appeals to the Supreme Court of the United States from the opinion of the Supreme Court of the State of Louisiana affirming the conviction and sentence to death of Appellant, entered herein on the 29th day of April, 1963.

This appeal and application for writs is taken pursuant to 28 USCA, Section 1257 (2) and (3).

Appellant was convicted of the crime of murder, in violation of Article 30 of the Louisiana Criminal Code; was sentenced to death and is presently confined at the Louisiana State Penitentiary at Angola, Louisiana.

2.

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following: (1) The complete transcript and record of this trial in the 21st Judicial District Court, in and for the Parish of Tangipahoa, State of Louisiana, bearing No. 9752 on the criminal docket of said Court. (2) A copy of the printed Briefs filed on behalf of Wayne Turner, Appellant. (3) A copy of the printed Brief filed on behalf of the State of Louisiana. (4) A copy of the opinion of this Honorable Court rendered on April 29, 1963. (5) A copy of this Notice of Appeal and Application for Writs. (6) A copy of the application for a Stay of Execution. (7) A copy of the order of Stay of Execution.

QUESTIONS PRESENTED BY THIS APPEAL:

The issues herein arise within the following framework:

(1) During the trial of this case the defendant moved for a mistrial, which was denied. A motion for a new trial was also denied. Both of these motions were based on the fact that several Deputy Sheriffs who were chief witnesses for the State spent considerable time during the examination of prospective jurors with jurors after their selection and with jurors after submission of the case to the said jurors; that these Deputy Sheriffs were in control and had charge of the said jury and were in charge of taking them out for meals, making telephone calls, and delivering messages for them; that all during this time the said Deputy Sheriff-witnesses had occasion to and did speak to the jurors who had been selected; and that they had opportunity to and did influence said jury in their verdict; that this contact with the jury prevented and destroyed an atmosphere in which the jury could freely exchange their ideas and views with respect to the testimony and veracity of the witnesses; and that this conduct on the part of the State's chief witnesses was unfair and improper conduct on the part of the State and was prejudicial to the rights of the accused.

(2) That on numerous occasions the jury was separated physically in that they were driven to and from meals in separate cars; and that in one instance one single juror was alone in the company of three Deputy Sheriffs, two of which said Deputy Sheriffs were chief witnesses for the prosecution, and that this separation lasted during a drive of approximately two miles back to the Court House from the restaurant.

382 This type of handling of prospective jurors and petit jurors has become an established practice in the Sheriff's Office of Tangipahoa Parish, Louisiana. In the case of State of Louisiana vs. Bobby Milton McAllister, No. 46,337, on the docket of the Supreme Court of the State of Louisiana, the identical situation occurred and said case is presently being appealed to the Supreme Court of the United States.

All of the above was prejudicial to the rights of the accused and thus deprived him of his constitutional rights to a trial by a fair and impartial jury in violation of the Sixth and Fourteenth Amendments to the said Constitution of the United States of America.

4.

Alternatively, in the event that this appeal shall have been improvidently taken, Wayne Turner prays that these papers, whereon this appeal was taken, be regarded and acted on as a Petition for Writ of Certiorari in accord with the provisions of 28 USC 2103; FCA 28, Section 2103.

/s/ Henry A. Mentz, Jr.
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/s/ Allen B. Pierson, Jr.
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Attorneys for Wayne Turner, Appellant, in connection with the appeal here prosecuted to The Supreme Court of the United States.

(Proof of Service Omitted in printing)

383 Clerk's certificate to foregoing transcript omitted in printing.

No. 763 Misc., October Term, 1963

WAYNE TURNER, *Appellant*,

vs.

LOUISIANA

Appeal from the Supreme Court of the State of Louisiana.

Appeal Dismissed and Certiorari Granted—March 23, 1964

THIS CAUSE having been submitted on the statement of jurisdiction, motion to dismiss and transcript of record,

ON CONSIDERATION WHEREOF, It is ordered by this Court that the motion to dismiss the appeal herein be, and it is hereby, granted.

IT IS FURTHER ORDERED that the appeal herein be, and it is hereby, dismissed for want of jurisdiction.

Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari is granted. The case is transferred to the appellate docket as No. 943.

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SUPREME COURT, U. S.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 53

WAYNE TURNER,

Appellant,

vs.

LOUISIANA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

APPELLANT'S BRIEF ON THE MERITS

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 53

WAYNE TURNER,

Appellant,

vs.

LOUISIANA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

APPELLANT'S BRIEF ON THE MERITS

Opinions of Lower Courts

The opinion of the Supreme Court of the State of Louisiana is reported at:

244 La. 447 (official) and at

152 So. 2d 555 (unofficial)

Basis of Jurisdiction

Appellant is before this Court pursuant to an order of this Court dated March 23, 1964, dismissing the appeal and granting a writ of certiorari, which said order is fully reproduced at page sixty-eight (68) of the "Transcript of Record" filed herein.

Constitutional Provisions and Statutes Involved

This case involves the following provisions of the Constitution of the United States:

(1) "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." United States Constitution, Amendment V.

(2) "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." United States Constitution, Amendment VI.

(3) "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any

person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." United States Constitution, Amendment XIV, § 1.

This case involves the following provision of the Constitution of the State of Louisiana:

(1) "In all criminal prosecutions the accused shall have the right to a speedy, public and impartial trial in accordance with the provisions of this constitution. All trials shall take place in the parish in which the offense was committed, unless the venue be changed; except that the Legislature may provide for the venue and prosecution of offenses when one of the acts constituting an offense or an element of the offense occurs in a parish of this state and other acts or elements thereof occur out of the parish or state, or when an offense is committed in this state but the exact place of the commission of the offense in this state cannot be established. The Legislature may provide for the venue and prosecution of offenses committed within 100 feet of the boundary line of a parish. The accused in every instance shall have the right to be confronted with the witnesses against him; he shall have the right to defend himself, to have the assistance of counsel, and to have compulsory process for obtaining witnesses in his favor. Prosecution shall be by indictment or information; but the Legislature may provide for the prosecution of misdemeanors on affidavits; provided, that no person shall be held to answer for capital crime, unless on a presentment or indictment by a grand jury, except in cases arising in the militia when in actual service in time of war or public danger. No person shall be twice put in jeopardy of life or liberty for the same offense, except on his own application for

a new trial, or where there is a mistrial, or a motion in arrest of judgment is sustained." Louisiana Constitution, Article I, § 9.

This case involves the following statutory provision of the State of Louisiana:

(1) "From the moment of the acceptance of any juror until the rendition of verdict or the entry of a mistrial, as the case may be, the jurors shall be kept together under the charge of an officer in such a way as to be secluded from all outside communication; provided that in cases not capital the judge may, in his discretion, permit the jurors to separate at any time before the actual delivery of his charge." West's Louisiana Statutes Annotated, R. S. 15:394.

Issues Presented for Review

The issues presented by this case for review all revolve around the (mis)handling of the petit jury during the three day felony murder trial of the accused, Wayne Turner. Basically the accused urges that his conviction was obtained from a jury which had been handled in such a way as to violate the civil rights of the accused, and in particular the right of an accused to a trial by a fair and impartial petit jury.

In the opinion of counsel for Wayne Turner, the issues presented to this Court for review may be stated as interrogatories as follows, to-wit:

(1) Assuming that state law prohibits both the physical separation of the jury members from each other and prohibits the jury from coming in contact with outside influence, is an accused in a capital case entitled to a new trial where both of these state laws are violated or must the

accused show that actual misconduct and/or prejudice resulted from the violation of the law?

(2) Assuming that state law prohibits both the physical separation of the jury members from each other and prohibits the jury from coming in contact with outside influence, is an accused in a capital case entitled to a new trial when both the physical separation and contact with outside influence occurs in the presence of key witnesses for the prosecution, even though these witnesses be deputy sheriffs in whose custody the jury has been placed by the Sheriff but without the consent of the accused?

(3) In a capital case, is the accused entitled to a new trial when, without his consent, the jury has been placed in the custody of deputy sheriffs who testify as to vital portions of the prosecution's case during a three day trial and who freely associated with the jury?

(4) Are the provisions of the Constitution of the United States violated, and the accused in a capital case thereby denied his civil rights and his right to a trial by a fair and impartial jury, when both physical separation of the jury members and mingling of the jury with witnesses for the prosecution occurs, or must the accused prove that actual misconduct and/or prejudice resulted therefrom?

(5) If it be determined that the accused must prove the occurrence of actual misconduct and/or prejudice, what evidence will sustain the burden thereby placed upon him?

Statement of the Case

The appellant, Wayne Turner, was tried and convicted of the murder of Albert Young during an attempted armed robbery.

The victim, Young, was employed as night attendant of a Phillips 66 Service Station just West of Hammond, Louisiana. Turner, who was under considerable mental strain brought about by his wife's pregnancy and lack of food, sleep and funds, appraised Young that it was his intent to rob the service station. At this point, Young drew a concealed revolver from his pocket. Shots were exchanged and Young was killed.

Wayne Turner admitted the crime and signed a confession the following day, prior to being allowed any contact with an attorney. No one doubts that Albert Young died at the hand of Wayne Turner. It is equally apparent, however, that no one would have died at all but for the foolhardy armed resistance by Young.

During the trial the State of Louisiana offered the sworn oral testimony of Chief Criminal Deputy Hulon Simmons and Deputy Vincent Rispone.

Deputy Simmons gave testimony vital to establishing the chain of evidence for the State's exhibits (Transcript of Record, page 21). In addition, he testified that Turner had made certain damaging admissions in his presence (Transcript of Record, page 34), and that a written confession signed by the defendant was freely and voluntarily given (Transcript of Record, page 52).

Deputy Rispone gave vital oral testimony regarding the investigation (Transcript of Record, page 22); other testimony essential to establish the chain of evidence (Tran-

script of Record, pages 25-26) and still other testimony to the effect that Turner led him to the weapon which was found in the woods behind the station together with Turner's identification cards (Transcript of Record, page 25).

During the trial, counsel for Wayne Turner objected to the testimony of these two witnesses and moved for a mistrial (Transcript of Record, page 15), which was overruled (Transcript of Record, page 29). After verdict, counsel for Wayne Turner renewed the objection through a motion for a new trial (Transcript of Record, page 16) which was not granted.

Turner's conviction carried with it a mandatory death sentence. The Louisiana Supreme Court heard the appeal and refused to grant a new trial.

The case is now before this Court for a review on a writ of certiorari.

The grounds advanced by counsel for Wayne Turner in objecting to the testimony of Deputies Simmons and Rispone and in seeking a new trial were specified in the motion for a mistrial (Transcript of Record, page 15) and in the written motion for a new trial (Transcript of Record, page 16). Both motions were overruled and this action was affirmed by the Louisiana Supreme Court on appeal. *State v. Turner*, 244 La. 447, 152 So. 2d 555 (1963).

Argument

May It Please the Court:

State Law:

Objections to the admissibility of testimony of Deputies Simmons and Rispone, the motion for mistrial and the motion for a new trial were based on the facts that these two deputies were chief witnesses for the prosecution and that they:

(1) Served members of the jury venire with summonses to be present for voir dire examination on the day of the trial;

(2) Associated freely and on a friendly and personal basis with prospective jurors on the first day of the trial prior to and during the selection of the petit jury;

(3) Took the petit jury into custody during the three days of the trial, sleeping, eating and associating with the jury during the course of the trial;

(4) Allowed the petit jury to be separated into two or more groups on nine occasions during the trial for purposes of traveling 4 miles round trip to a restaurant for meals;

(5) Allowed one petit jury member, Mr. Paul Cassanova, to be isolated from all other members of the jury in their company or in the company of one of them for a time and in the company of one other deputy sheriff during a two mile automobile ride while returning from the restaurant;

(6) Associated with the petit jury members, ran errands and made telephone calls for them, supplied their needs and wants generally, and mingled with and

became a part of and identified as a member of the group, all during the trial of the case, and after the trial but before verdict.

It is unquestionably true that the testimony of both of these two deputy sheriffs was essential to the establishment of the case for the State and that the State knew the value of their testimony (Transcript of Record, page 18).

The *per curiam* attached to the bill of exceptions by the trial judge (Transcript of Record, page 20), indicates that the trial judge was under the mistaken impression that both deputies had testified:

(1) That they had never discussed anything having any bearing on the case with any member of the jury.

(2) That they had never discussed the case with each other or other deputies in the presence of the jury.

(3) That they had never heard any aspect of the case discussed by any member of the jury.

This Court's attention is respectfully directed to the testimony of Deputy Rispone relative to the motion for a mistrial (Transcript of Record, pages 27-29). Deputy Rispone was not asked these or any questions by the court or by the prosecution. The motion for a mistrial was simply overruled.

Deputy Simmons did testify with reference to a renewed motion for mistrial that he had not discussed the case with members of the jury nor in their presence nor heard it discussed by them. Deputy Simmons was asked: "Q. To the best of your knowledge has Dy. Rispone in your presence, had any conversation with regard to this case?" He answered "A. To my knowledge he has not" (Transcript of Record, page 37).

This is evidently the testimony that the trial judge thought he heard from Deputy Rispone on this point for the record is otherwise barren of any testimony by or about Deputy Rispone regarding his conduct with the jury. As a single exception, Deputy Rispone tesfified he did not discuss the case with juror Paul Cassanova on the occasion of returning from Ardillo's Restaurant (Transcript of Record, page 28).

Deputy Simmons further testified however (Transcript of Record, page 37), that Deputy Rispone was not alone with Mr. Cassanova while he, Simmons, was inside signing the lunch check. Deputy Simmons, not being outside at the time could not have known where Deputy Rispone and Mr. Casanova were, whether they were alone or not, and if not alone as stated by Deputy Simmons, who was with them? Nor could Simmons have any knowledge of what was discussed while he was not present.

The State question can be conveniently subdivided into two parts:

(1) The law of the State of Louisiana regarding separation of the jury members from one another has been violated.

(2) The law of the State of Louisiana regarding segregation of the jury from all outside influence has been violated.

PHYSICAL SEPARATION OF THE JURY MEMBERS FROM ONE ANOTHER

Louisiana Revised Statute 15:394, set forth in its entirety under the section of this brief entitled "Constitutional Provisions and Statutes Involved", wisely requires that from the moment of acceptance of any juror in a capital case until the rendition of verdict, the jurors shall

be kept together in such a way as to be secluded from all outside communication. This statute was intentionally violated at least nine times during the trial of this case. Three times on each of the consecutive three days of the trial, the jury was transported to Ardillo's Restaurant, approximately two miles from Amite, being divided into three automobiles for the trip, both there and back (Transcript of Record, page 28).

A most flagrant violation of this statute occurred when one juror, a Mr. Paul Casanova, was allowed to travel a distance back to the Court House following the noon meal on the first day of the trial, alone, save for the company of three Deputy Sheriffs, two of whom were Deputies Simmons and Rispone. The third deputy was unidentified and drove the automobile. The evidence discloses that for a time at least Mr. Casanova may have been alone with Deputy Rispone—and possibly unattended altogether (Transcript of Record, page 37). As Deputy Simmons was not present he did not know whether Deputy Rispone was alone with Mr. Casanova or not.

The above detailed conduct by Deputies Simmons and Rispone is contrary to State law regarding handling of petit juries and therefore constitutes adequate reason to set the verdict aside.

In *State* v. *Hornsby*, 8 Rob. 554, 558-9, a case decided in 1844, the Louisiana Court enunciated the rule of law for Louisiana applicable to this situation and gave the reason therefor as follows, to-wit:

> "In capital case, the jury should not be permitted to separate after they have been sworn, either with or without the consent of the prisoner. This rigor which the court conceives to have been the universal practice in the country parishes, can lead to no bad conse-

quences. *This precaution is necessary to protect the accused from any undue influence which may be exercised upon the members of the jury, even without their knowledge, and cannot be tortured into a disparagement of their integrity. Improper impressions may and will be made upon their minds by artful and designing men, of which they may be perfectly unconscious;* neither can they shut their ears to the expression of popular opinion; and as well might the administration of the juror's oath be considered as conveying a doubt of his integrity, as this temporary seclusion from intercourse with the community at large. In cases not capital, courts may, in their discretion, permit the jury to disperse until after they have received the charge of the court; but they should not be permitted to separate after the charge has been given. In these cases, misconduct on the part of the jury will set aside their verdict; in capital cases, upon a separation, misconduct and abuse will always be presumed." (Emphasis added.)

The rule of the *Hornsby* case was followed in 1850 in the case of *State* v. *Desmond*, 5 La. Ann. 398, and again in 1856 in the case of *State* v. *Costello*, 11 La. Ann. 283.

In 1857 in *State* v. *Populus*, 12 La. Ann. 710, the *Hornsby* case was quoted with approval, as it was in 1869 in the case of *State* v. *Evans*, 21 La. Ann. 321.

So well settled was this rule of law in Louisiana that the entire opinion in *State* v. *Frank*, 23 La. Ann. 213, an 1871 case, consists of the following language, to-wit:

"On an indictment for murder the defendant was tried and convicted of manslaughter, and, being sentenced to the Penitentiary for ten years, he has appealed.

On motion for new trial it was shown that there was a separation of the jury twice during the progress of the trial. In capital cases it is well settled, that jurors are not permitted to separate, and that upon a separation misconduct and abuse will always be presumed. *State* v. *Crosby*, 4 An. 435; *State* v. *Evans*, 21 An. 321.

It is therefore ordered that the judgment appealed from be set aside and annulled, and that this case be remanded for new trial, and to be proceeded in according to law."

In 1889 in the case of *State* v. *Nockum*, 41 La. Ann. 689, 6 So. 729, the Louisiana court again approved the rule of the *Hornsby* case but properly failed to find any actual separation of the jury. The allegation of separation in the *Nockum* case was that one juror went to the water closet unaccompanied by the entire jury and a deputy sheriff. The jury actually stood 15 to 20 feet from the door of the cubicle which remained partially opened.

In the case of *State* v. *Warren*, 43 La. Ann. 828, 9 So. 559, the court, after finding that part of the jury was left unattended, made, at page 829, the following observations:

"They were accessible; misconduct is presumed."

The court also pointed out on the same page that:

"The dereliction on the part of the sheriff is censurable."

It is respectfully submitted that prejudice is to be presumed in the case at bar and that the conduct of the Sheriff's office of Tangipahoa Parish in this instance is "censurable".

It is not every case of separation, however, that will automatically result in the setting aside of a jury verdict. The presumption which automatically arises may be re-

gated by sufficient evidence being offered to remove any suspicion of the propriety of the conduct. Thus, in the case of *State* v. *Joiner*, 163 La. 609, 112 S. 503, at page 507, the court after again affirming the rule of the *Hornsby* case reasoned that:

> "It is true that this presumption may be overcome by showing that the accused was not prejudiced by the separation of the jury."

It is submitted that in the instant case the State has not refuted this presumption of abuse, misconduct and prejudice as to the separation of Paul Casanova. It is likewise submitted, and undeniable, that on the other eight occasions when the jury was physically separated from each other there was no showing by the State and no attempt to show that the accused was not prejudiced by the separation. Only as to the separation of Mr. Casanova was even a weak attempt made by the prosecution to rebut the presumption of prejudice.

There are a number of cases in Louisiana which support the proposition that a temporary and/or accidental separation of the jury does not give rise to the presumption of prejudice to the accused. Such is *State* v. *Smith*, 156 La. 818, 101 So. 209. An accidental separation occurred when a door blew closed. The one juror caught alone on the wrong side of the door was within the sight of a deputy and the duration of the separation was momentary.

It is respectfully submitted that under the law of the State of Louisiana, in a situation such as the one involving Juryman Paul Casanova in particular and involving the nine trips to the restaurant during the course of this trial in three separate automobiles, there exists a clear intentional violation of the statute and not an accidental separation only and that a presumption arises that the accused has

been prejudiced thereby. This prejudice is sufficient, if not adequately refuted by the State, to set aside a verdict of guilty and require a new trial.

In writing the opinion of the Supreme Court of Louisiana, Justice Hawthorne fell into the same error that the trial judge committed when, in his *per curiam* to the bill of exceptions, the trial judge stated that both deputies testified on the hearing of the motion for a mistrial that they had not discussed the case with any jury member nor had they heard the case discussed by the jury nor had they discussed the case with each other or other deputies within the presence of the jury. The record simply does not bear this out as to the incident with Mr. Casanova and certainly not as to the other eight separations.

The facts which constitute a violation of state law, are adequate, in the opinion of counsel, to justify vacating the verdict of guilty and ordering a new trial.

Actually the state Supreme Court failed to clearly distinguish between the physical separation of one jury member from another which is involved in this case and the seclusion or segregation of all of the jury members from outside influence, which is also involved in this case.

Seclusion of the Jury Members From Outside Influence

What is outside influence? Certainly juries must be secluded from designing persons who would intentionally strive to influence the verdict. Certainly they should be secluded from the attorneys and the defendant who, through a misplaced sense of duty or overzealousness might influence the verdict. Certainly the jury should be secluded from the witnesses whose credibility, veracity and perception they must weigh.

The situation is no different when the witness happens to be a deputy sheriff who, pursuant to his oath of office, is ordered to seclude the jury from all outside influence. Indeed, the situation is no different if the deputy is not a witness. Deputy Sheriffs, be they witnesses or not, are not by virtue of their duty to seclude the jury, given license to free and unrestricted communication and association with the jury. This duty to seclude the jury ought to mean—and does mean—to seclude the jury from communication with the deputies themselves, except such as is necessary to the discharge of the duty of secluding the jury. The mandate of the statute to segregate the jury from all outside communication would not appear to be a license to deputy-witnesses or even for deputy-non-witnesses to mingle with the group, make new acquaintances and renew old friendships.

The jury was most certainly not segregated or secluded from the influence of the deputy sheriffs themselves, and in particular from prosecution witnesses who were also deputy sheriffs. These two deputy sheriffs mingled freely with the jury, eating with them, traveling with them, talking to them during recesses, running errands for them, making telephone calls, delivering messages to their families and the like. In short, the two deputy sheriffs freely mingled with the jury and became a part of the group and identified with the group of twelve true and honest men.

That this is what happened is proven by the testimony of Deputy Simmons himself (Transcript of Record, pages 35-36) and by Deputy Rispone (Transcript of Record, pages 27-28-29).

This is not the sort of conduct contemplated by Louisiana Revised Statute 15:394, which requires that the jury be "secluded from all outside communication" nor is it the sort of conduct which can be approved under the Consti-

tution of the United States, which guarantees every such accused a trial by an impartial jury. It was not approved by Justice Hawthorne who in writing the opinion of the Louisiana Supreme Court in this case said:

> "This court is inclined to look upon the practice with disapproval, however, because in such cases there may be prejudice of a kind exceedingly difficult to establish" (Transcript of Record, page 64).

Nor was similar conduct deemed "becoming" as far back as 1856 in a civil proceeding in which the sheriff, a necessary party to his wife's action, was permitted to perform ministerial duties but not take charge of the jury. *State* v. *Judge of the Sixth Judicial District Court of Point Coupee*, 11 La. Ann. 79 (1856).

It is submitted that the statute does not contemplate that the deputy sheriffs in whose charge the jury is placed should become identified with the group in the sense that they are allowed to mingle freely with the jurors and hold social intercourse with them. It is rather the duty of the deputy sheriffs to segregate the jurors from all outside influence and this includes from themselves. This duty would appear to be increased where the deputy knows he is to be a prosecution witness.

It is true that the mere fact that a deputy is a prosecution witness does not disqualify him from performing his duty with reference to the custody of the jury. But the nature of this duty is not to fraternize with the jury but rather to seclude the jury. When the deputy is a witness elementary fair play and a basic sense of conscience demand that he perform his ministerial duties with an awareness of his dual role.

The case at bar constitutes a flagrant violation of the statute and of the spirit and intent of the Constitution of

the United States and of the State of Louisiana. It cannot be said under these facts and circumstances that the accused was not prejudiced. Nor can it be said that his civil constitutional rights in a capital case were fully protected.

The case at bar and the need for setting aside the verdict below are strengthened by virtue of the fact that this practice, a practice which was disapproved but condoned by Justice Hawthorne in his opinion for the Supreme Court of Louisiana, has become standard operating procedure for the Sheriff's office of the Twenty-first Judicial District Court, Parish of Tangipahoa. The attention of this Court is respectfully directed to the case of *State* v. *McAllister*, 244 La. 42, 150 So. 2d 557. That case involved practically the identical situation with regard to jury handling as does this case. It was tried in the Tangipahoa Parish Court only a few months before the *Turner* case was tried and a bill of exceptions was reserved and perfected in that case on the same point before this Honorable Court for review. With full knowledge of the objection in the *McAllister* case, the Sheriff and his deputies allowed the same thing to occur again.

It thus becomes evident that the pattern is emerging and that unless this Honorable Court puts a stop to this sort of reprehensible conduct, other defendants in criminal cases may be deprived of their constitutional right to a trial by a fair and impartial jury.

In the case of *State* v. *Oteri*, 128 La. 939, 55 So. 582, a capital case decided in 1911, Justice Land stated at page 951 that:

> "We, however, must express our disapproval of the permission given the jury to attend the show, thereby subjecting them to the danger of outside influence. We may add that our ruling would have been different if

any prejudice whatever had been shown by the evidence."

In the *Oteri* case there had been no separation of the jury. The jury had merely attended the theater in the presence of Deputy Erwin who was an important prosecution witness. The instant case is to be distinguished from the *Oteri* case in that there was a separation of the jury on at least nine separate and distinct occasions and that on one of these occasions Juror Paul Casanova was separated and in the company of two witnesses for the prosecution and had been, prior to the arrival of Deputy Simmons, either alone with Deputy Rispone or with him in the presence of an unidentified third person. To quote the *Warren* case, "they were accessible; misconduct is presumed."

The *Oteri* case does not answer or overcome the presumption of prejudice which arises once a physical separation of jury members, one from another, has been shown. Nor does the *Oteri* case apply to the case at bar for even if prejudice were not presumed in the instant case, the reoccurrence of the reprehensible conduct of the deputies, and especially of the deputy-witnesses, of fraternizing with the jury while that very question was on appeal from that very court strongly suggests prejudice and intentional misconduct.

The handling of the petit jury in this case was disapproved of even by the court which placed a stamp of approval on it. It is left for this court to refuse to wink at the misconduct of the deputy sheriffs and protect the rights of the accused to a trial by an impartial jury.

Constitutional Question

The case at bar presents two important constitutional questions for determination. These are:

(1) Is the Constitutional right of an accused to trial by an impartial jury in a capital case denied under circumstances constituting a violation of state law on the subject of separation and seclusion of the petit jury?

(2) Is the right of an accused to trial by an impartial jury denied, regardless of state law, when the jury in a capital case is allowed to associate and fraternize with deputy sheriffs, two of whom are chief prosecution witnesses and when the jurors are allowed to separate into groups as small as one juror in the presence of the deputy-witness?

Throughout the history of the United States trial by jury has been one of the important rights guaranteed to an accused in a criminal trial, especially in a capital case. The law, both State and Federal, surrounds juries with all sorts of special and stringent requirements regulating their qualifications, method of selection and conduct.

The conduct of juries after their selection is closely regulated by statute and custom in order to insure that no opportunity is afforded unscrupulous persons to intentionally tamper with or influence the verdict of the jury.

This is the meaning of that portion of the Sixth Amendment to the Constitution of the United States which guarantees "a speedy and public trial, by an impartial jury."

But it is not only from unscrupulous persons that a jury must be protected. Juries are protected from the weight of public opinion or from the honest and sincere opinions of their friends and relatives. This is evidenced by the

fact that juries are either secluded, or, if permitted by law and the court's discretion to separate, are admonished not to discuss the case with others or to read about it.

The Holy Bible, King James Version, admonishes persons to "Abstain from all appearance of evil." 1 Thessalonians 5:22.

Thus it is written in *Mattox v. United States*, 146 U. S. 140, 149, 13 S. Ct. 50, 53, 36 L. Ed. 917, 921 that:

> "It is vital in capital cases that the jury should pass upon the case free from external causes tending to disturb the exercise of deliberate and unbiased judgment. *Nor can any ground of suspicion that the administration has been interfered with be tolerated.* Hence, the separation of a jury in such a way as to expose them to tampering, may be reason for a new trial, variously held as absolute; or prima facie, and subject to rebuttal by the prosecution; or contingent on proof indicating that a tampering really took place. Whart. Crim. Pl. §§821, 823, 824, and cases cited.
>
> Private communications, possibly prejudicial, between jurors and third persons, or witnesses, or the officer in charge, are absolutely forbidden, and invalidate the verdict, at least unless their harmlessness is made to appear." (Emphasis added.)

It is clear that this matter has long been considered to be a substantial Constitutional question. Consideration is respectfully directed to the following two lengthy quotations from two lower federal courts:

> "The law, as the government concedes, is that where there is communication and social intercourse between a juror and a party or witness, a presumption of misconduct sufficient to vitiate the verdict arises. The

only question here is whether the circumstances detailed at the hearing affirmatively indicate that no prejudice could result to the defendant. I turn now to a consideration of this question.

The parties have cited numerous authorities which each thinks support the respective positions, but, in cases of this kind, where so much depends on the total situation disclosed by the particular circumstances, analogous cases are of doubtful utility. The number of times Juror 7 and Flounders fraternized in the absence of previous acquaintance or any apparent mutual bond is sufficient to raise suspicious implications . . .

It is unnecessary to make a finding whether the case was actually discussed. It is sufficient that the discussion approached the subject matter of the case much more closely than the juror wished to admit, for I think it perfectly clear that railroading and railroad men were discussed. But even if this were not true, I think the circumstances detailed are sufficient to raise suspicious implications. The conviction of the defendant at bar is very important to the Pennsylvania Railroad; *but defendant has the right, protected by the Bill of Rights, to an impartial trial. If the circumstances are suspicious I think that is sufficient to vitiate the verdict. Little* v. *United States, 10 Cir., 73 F. 2d 861. It would be impossible in most cases by the very nature of things to prove actual misconduct, or that the case was discussed. Moreover, it is not only possible but in most cases it would be more effective to adopt a more subtle approach than making a direct "fix". Impressions created by favorable conversation might be just as effective.* Now it must be conceded in this case that Flounders made a very favorable impression on Juror 7. What influences a particular juror necessarily must be

vague and indefinite" *United States* v. *Marine*, 84 F. Supp. 785, 787 (Del. 1949). (Emphasis added.)

The *Marine* case involved the prosecution of a railroad baggage man for possession of stolen baggage. It appears that the jury, and those in charge thereof, should be held to a much higher degree of caution and should zealously attempt to avoid all appearance of evil and misconduct in a capital case. That this was not done is evidenced not only by the facts of this case but by the fact that this reprehensible practice is becoming standard operating procedure in the courts of this Parish.

"The rebuttable presumption was that these communications by the juror with outside persons were prejudicial to the moving party. *Chambers* v. *United States*, 237 Fed. 531, 421 (CCA 8). There is no evidence in the case that the evidence was rebutted. *The least that can be said about this misconduct of one of the jurors is that it raises a grave doubt whether the constitutional right of plaintiffs in error to a trial by an impartial jury was not infringed*" *Sutherland* v. *United States*, 19 F. 2d 202, 212 (8th Cir. 1927). (Emphasis added.)

An accused should not be required, to prove, as the opinion of the Louisiana Supreme Court does require, once suspicious circumstances have been alleged and proven, that there did in fact exist misconduct or prejudice, either intentional or unintentional. The case of *Little* v. *United States*, 73 F. 2d 861 (10th Cir. 1934) deals with this problem and clearly states that any requirement placing a burden on the accused to show that the irregularities did in fact influence the jury would be a denial of a "fair trial". Quoting further from that opinion, in which the irregular conduct complained of was the court's permitting the court stenographer to read a portion of the jury charge to the jury out-

side the presence of the court, the following language is found at pages 866-7.

> "We conclude that where the entire record affirmatively discloses that an error has not affected the substantial rights of an appellant, it will be disregarded. But where error occurs which, within the range of a reasonable possibility, may have affected the verdict of the jury, appellant is not required to explore the minds of the jurors in an effort to prove that it did in fact influence their verdict. So to hold would, as a practical matter, take from a defendant his right to a fair trial. In this case we know nothing of what went on while the stenographer was in the jury room; it is entirely possible that a shorthand character was misrepresented; emphasis plays an important role in transmission of ideas by word of mouth and the difficult injunction of the court to avoid any emphasis is no assurance that there was none. What else may have occurred, we do not know. No outsider has any business in the jury room; much harm could result, and that is enough. The record failing affirmatively to disclose that no prejudice did result, the verdict cannot stand."

The case most nearly in point as to the facts of the case at bar, and in which the verdict of guilty of rape of a child under 12 was reversed, is a leading Indiana case. *State* v. *Woods*, 233 Ind. 320, 119 NE 2d 558. The following quotation from page 560 of the area reporter discloses a situation very similar to the one in the instant case and rests the reversal of the jury verdict on sound grounds of justice and fair play.

> "There was no motion for a separation of the jury, and the jury did separate at the noon intermission and at the conclusion of each day of the trial. However, when

they returned to the courthouse they were in a room behind the courtroom. Appellant's special bill of exceptions No. 1 fails to contain any diagram of the courtroom and the rooms connected with and under the jurisdiction of the court, and we are not able to determine whether the alleged misconduct of the jury occurred in the regular jury room or in another room which was used as a waiting room by the jury after it had been duly sworn and empaneled to try the cause. In this special bill of exceptions we find the testimony of the two court bailiffs who had charge of the jury and the testimony of counsel for appellant. None of this testimony was contradicted nor did the State introduce any evidence in rebuttal. From this testimony it is made to appear that police officers who were witnesses for the State, and the sheriff, who had been active in attempting to solve the crime, were visiting with members of the jury in the room where the jury gathered during intermissions and recesses. When the trial judge was on the bench, counsel for appellant in open court requested one bailiff to stop the witnesses from visiting with the jury. The next day the visiting continued, and counsel for appellant duly moved for a mistrial which, after a hearing, was overruled by the court. It was not made to appear that any of the conversations had anything to do with the evidence in the cause, yet such conduct cannot escape our condemnation even though the witnesses may have made no attempt to discuss the case. If the appellant during intermissions had been permitted to go in the jury room and visit and fraternize with members of the jury, the State could properly have moved to declare a mistrial. The jury should determine the credibility of witnesses and the weight to be given their testimony from the evidence given upon the trial, and it would be

all too easy for the jury unconsciously to be influenced as to these matters by a friendly association with the witnesses for the State.

Canon 23 of the Canons of Professional Ethics adopted by the American Bar Association states the correct rule for the attorney's conduct toward a jury as follows:

> 'All attempts to curry favor with juries by fawning, flattery or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the court out of the jury's hearing. A lawyer must never converse privately with jurors about the case; and both before and during the trial he should avoid communicating with them, even as to matters foreign to the cause.'

"We feel the witnesses for both sides should be required to govern their conduct with equal propriety. The conduct of witnesses in visiting with the jury was prima facie prejudicial to the appellant, and for this cause the judgment must be reversed. 1 Hyatt on Trials, §§933, 934, pp. 949, 950."

Later Indiana cases have required that objection to the association and fraternization be timely made, which was done in the *Turner* case during the trial through counsel's motion for a mistrial (Transcript of Record, pages 27 and 35). *Spencer* v. *State*, 237 Ind. 622, 147 NE 2d 583 (1958) and *Myers* v. *State*, 240 Ind. 641, 168 NE 2d 220 (1960). In the latter case the court found that the presumption had in fact been overcome by the evidence.

It is apparent that the facts of the *Woods* case differ from the facts of the case at bar in only one material aspect.

That is that in the *Woods* case the objectionable fraternization continued after counsel had requested that it cease. Analogous to this, however, is the fact that the same conduct had been objected to by counsel in the *McAllister* case only months before in the same trial court, and yet this conduct reappeared during the trial of the appellant now before this court.

It is for this court to decide whether or not the physical separation of the jury members contrary to State law; the free association, fraternization and mingling with the jury by deputy sheriffs, two of whom were chief prosecution witnesses; and the isolation of one petit juror in the company of three deputy sheriffs, two of whom were the same two chief prosecution witnesses; where these practices are becoming standard procedure in this Parish despite objection, gives rise to circumstances sufficient to warrant the setting aside of the verdict of guilty in this capital case.

The practice of allowing an interested deputy to fraternize with the jury has long been deemed unbecoming in Louisiana. *State* v. *Judge of the Ninth Judicial District Court of Point Coupee, supra.* The practice was specifically disapproved of in the opinion of the Louisiana Supreme Court in this case, but was allowed to stand because the accused failed to prove actual misconduct (Transcript of Record, page 64). A practically identical situation in Indiana resulted in a reversal of the jury verdict in a non-capital case and the granting of a new trial. *State* v. *Woods, supra.* The *Little Mattox* and *Marine* decisions *supra* recognize that suspicious circumstances and not actual of misconduct were sufficient to entitle the accused to a new trial under the Bill of Rights.

Certainly the circumstances of the case at bar are suspicious, both from the legal presumption which arises under

state law upon the physical separation of jurors, one from another; and from the proven circumstances of unnecessary fraternization and association, of the renewing of old friendships and establishing of new acquaintances between the deputy-witnesses and the jurors. Certainly the time has come not only to label these practices as unbecoming and disapproved, but to prohibit them altogether.

Conclusion

In the opinion of court appointed counsel for Wayne Turner, an indigent defendant, the Supreme Court of the United States should set aside the verdict of the district court of the 21st Judicial District of Louisiana, Parish of Tangipahoa, on the ground that the same was obtained without due regard for the constitutional right of the accused to trial by an impartial jury and order the trial court to proceed immediately to grant the accused, Wayne Turner, a new trial in conformity with the opinion expressed by this Honorable Court and with due regard and protection for all of his constitutional rights.

Respectfully submitted,

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Certificate of Service

I, Allen B. Pierson, Jr., one of the attorneys for Wayne Turner, appellant herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 21st day of August, 1964 I served a copy of the foregoing brief on Michael E. Culligan, Assistant Attorney General, 104 Supreme Court Building, 301 Loyola Avenue, New Orleans, Louisiana, counsel for the State of Louisiana, by mailing a copy of said brief to him first class, postage prepaid, the envelope duly addressed as above.

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In the Supreme Court of the United States

OCTOBER TERM, 1964

WAYNE TURNER,

Appellant,

v.

LOUISIANA,

Appellee.

Appeal from the Supreme Court of the State of Louisiana

ORIGINAL BRIEF ON THE MERITS ON BEHALF OF LOUISIANA APPELLEE

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No. 943

In the Supreme Court of the United States

OCTOBER TERM, 1964

WAYNE TURNER,

Appellant,

v.

LOUISIANA,

Appellee.

ORIGINAL BRIEF ON THE MERITS ON BEHALF OF LOUISIANA APPELLEE

OPINION OF LOWER COURTS

The opinion of the Supreme Court of the State of Louisiana is reported at:

244 La. 447 (official) and at
152 So. 2d 555 (unofficial)

BASIS OF JURISDICTION

Appellant is before this Court pursuant to an order of this Court dated March 23, 1964, dismissing the appeal and granting a writ of certiorari, which said order is fully reproduced at page sixty-eight (68) of the "Transcript of Record" filed herein.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the following provisions of the Constitution of the United States:

(1) "No person shall be held to answer for a

capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in the time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." United States Constitution, Amendment V.

(2) "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." United States Constitution, Amendment VI.

(3) "All persona born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor

deny to any person within its jurisdiction the equal protection of the laws." United States Constitution, Amendment XIV, S 1.

This case involves the following provision of the Constitution of the State of Louisiana:

(1) "In all criminal prosecutions the accused shall have the right to a speedy, public and impartial trial in accordance with the provisions of this constitution. All trials shall take place in the parish in which the offense was committed unless the venue be changed; except that the Legislature may provide for the venue and prosecution of offenses when one of the acts constituting an offense or an element of the offense occurs in a parish of this state and other acts or elements thereof occur out of the parish or state, or when an offense is committed in this state but the exact place of the commission of the offense in this state cannot be established. The Legislature may provide for the venue and prosecution of offenses committed within 100 feet of the boundary line of a parish. The accused in every instance shall have the right to be confronted with the witnesses against him; he shall have the right to defend himself, to have the assistance of counsel, and to have compulsory process for obtaining witnesses in his favor. Prosecution shall be by indictment or information; but the Legislature may provide for the prosecution of misdemeanors on affidavits; provided, that no person shall be held to answer for capital crime, unless on a presentment or indictment by a grand jury, except in cases arising in the

militia when in actual service in time of war or public danger. No person shall be twice put in jeopardy of life or liberty for the same offense, except in his own application for a new trial, or where there is a mistrial, or a motion in arrest of judgment is sustained." Louisiana Constitution, Article I, § 9.

This case involves the following statutory provision of the State of Louisiana:

(1) "From the moment of the acceptance of any juror until the rendition of verdict or the entry of a mistrial, as the case may be, the jurors shall be kept together under the charge of an officer in such a way as to be secluded from all outside communication; provided that in cases not capital the judge may, in his discretion, permit the jurors to separate at any time before the actual delivery of his charge." West's Louisiana Statutes Annotated, R.S. 15:394.

(2) "A legal presumption relieves him in whose favor it exists from the necessity of any proof; but may none the less be destroyed by rebutting evidence; such is the presumption attaching to the regularity of judicial proceedings; that the grand jury was legally constituted; that public officers have done their duty; that a relation or subjectmatter once established, continues, but not that it pre-existed; that the defendant intended the natural and probable consequence of his act; that the defendant is innocent; that the defendant is sane and responsible for his actions; that the person in the unexplained possession of property recently stolen is the

thief; that evidence under the control of a party and not produced by him was not produced because it would not have aided him; that the witnesses have told the truth." LSA R.S. 15:432.

ISSUED PRESENTED FOR REVIEW

The accused urges that his conviction was obtained from a jury which had been handled in such a way as to violate the civil rights of the accused, and in particular the right of an accused to a trial by a fair and impartial petit jury.

In the opinion of counsel for the State, the issues presented to this Court for review may be stated as follows:

(1) Does a separation of one or more jurors from the remainder of the jurors constitute a "Separation" as contemplated by LSA R.S. 15:394 and the Constitution of the United States and of Louisiana, if each group of jurors is under direct custody and supervision of a deputy sheriff or bailiff?

(2) Does the presence of a deputy sheriff or bailiff who is also a State witness with one or more jurors, on an occasion of transporting jurors to and from meals and lodging, or ministering to their needs, constitute a violation of the defendant's civil rights and his constitutional rights to a degree which would vitiate a jury verdict of guilty? in a capital case?

(3) Does contact between one or more jurors with such deputies or bailiffs constitute an irrebuttable presumption of misconduct or prejudice?

STATEMENT OF THE CASE

Wayne Turner was tried under a Grand Jury indictment for the murder of Albert Young on October 7, 1960.

On October 6, 1960, Wayne Turner arrived in Hammond, Tangipahoa Parish, Louisiana, accompanied by his wife, Shirley Turner. They had rented a car in California for the trip. They rode around the Hammond area until 1:00 A.M. of the morning of October 7, looking for a place to burglarize, and finally chose a Phillips "66" service station located on Highway 190 just beyond the city limits of Hammond, on the west.

They returned to the business area of Hammond, where Wayne Turner broke into the Community Chevrolet Co., Inc. and stole a 1960 Galaxie Ford. It was arranged that Wayne was to go to the station in the Ford and Shirley was to pick him up after the burglary, in the car which they had rented. The Ford was to be abandoned on the scene to make pursuit and identification more difficult.

When Turner drove up in the drive-way of the service station, Albert Young, the attendant approached him and asked him what he wanted. Turner informed him that it was stick up.

As Turner got out of the car, Young pulled a gun from his pocket, and Turner who had by this time pulled out his gun, fired three times, hitting Young in the chest, before Young could fire.

One of the bullets passed through Young's heart, killing him almost instantly.

Turner fled to a nearby woody area, threw away the gun clip and identification papers and other papers, and as per plan, was picked up by Shirley.

They were later apprehended in a ditch into which they ran while trying to turn around.

Turner was tried individually and found guilty as charged.

A number of bills of exception were taken but only one bill was perfected.

It is noted that the brief of Appellant dispels any doubt that Albert Young died at the hand of Wayne Turner. Doubt does exist in the mind of the State however, that no one would have died at all but for the foolhardy armed resistance by Young.

The jury returned a verdict of guilty as charged which carried with it the mandatory death sentence. The Louisiana Supreme Court heard the appeal and refused to grant a new trial.

The case is now before this court for review on a writ of certiorari.

ARGUMENT

May it please the Court:

State Law:

Objections to the admissibility of the testimony of Deputies Simmons and Rispone during the trial, the motion for the mistrial, and the motion for a new

trial were based on the fact that these two deputies were the chief witnesses for the State and from the commencement of the trial, they had pursuant to their duties, served jury summons; taken the petit jury into custody during the trial, attending to their wants and acting as a guard to keep the jury members separate from any outsiders.

Attorneys for the defendant, Wayne Turner allege further that these deputies associated with the petit jury on a very close basis, sleeping, eating, and associating with the jury members during the course of the trial; that on one occasion they allowed one of the jury members, Mr. Casanova, to be isolated from the other members of the jury; and further, that they ran errands and made telephone calls for them and *mingled* with and became a part of and identified as a member of the group all during the trial.

There is nothing in the record to show that these deputies or any other deputies or any other persons ever entered the jury room while any deliberations were going on or arguments made. There is nothing in the record to show that these deputies or any other deputies in charge of the jury members at any time discussed with any one or more of said jury members any fact about the case or in any manner attempted to influence them nor in any manner performed their official duty in such a manner as to attempt to create an obligation on the part of the jury member to favor (?) the side of the State in this case.

The State does not deny that the testimony of

both of these deputies was essential as was any other major link in the testimony of the trial.

Counsel for the defense assume first that there was a separation of the jurors. They also contend that the exposure of the person of the two deputies to the persons of the jury members automatically raises the presumption of fraud and deceit, which automatically vitiates the judgment and the verdict and the sentence.

Louisiana Revised Statutes 15:394 provides:

> "From the moment of acceptance of any juror until the rendition of the verdict or the entry of a mistrial, as the case may be, the jurors shall be kept under the charge of an officer in such a way as to be secluded from all outside communication."

The purpose of this section is to keep the jurors from any *outside* influence. The separation contemplated is separation from the public or outside contact.

State v. Migues, 191 La. 55, 184 So. 540
State v. Sharbino, 194 La. 709 194 So. 756
State v. Fuller, 218 La. 872 51 So. 2nd 305
State v. Davis, 237 La. 577, 111 So. 2nd 778

It of course follows that in the discharge of his duty the officer shall not have any influence on the jury, shall not discuss the case with the jury or attempt to discuss it with them or attempt to influence the verdict in any manner.

Section 858, American Jurisprudence, Volume 53, declares:

"An officer who is prejudiced with respect to a

case on trial is not necessarily disqualified from acting as custodian of the jury, nor merely because he happens to be a witness for the prosecution."

This declaration goes to greater length than the present case, in that no prejudice on the part of any deputy was shown.

Section 861, same Volume, declares:

The word "separation" as applied to jurors and juries is used both in the sense of a separation of one or more jurors from their fellows, and in the sense of a dispersal of the jury itself, so that they may go to their several homes or about their businesses.

Section 862 declares:

The prominent object of the rules respecting the seclusion of juries is to secure them from improper influences; to keep the jury aloof and free from contact or communication with other parties THAN THE BAILIFFS who have them in keeping during the trial.

Section 876 provides:

Not every separation of a juror from his fellows constitutes an unlawful separation, or is such a separation as the law will notice.

The sole separation complained of by the defendant arose when one of the jurors, Paul Casanova, was separated from the other eleven jurors, at Ardillos restaurant, where the jury went to eat its noon meal. The meal finished, Deputy Hulon Simmons went to

pay the check for the meal. After paying the check he discovered that the juror, Casanova, had been left by the other two deputies driving the other eleven jurors in two cars. He was however left in the custody of Deputy Vincent Rispone and never left his care.

On the motion for the mistrial (Page 27, Transcript) the Court suggested that in view of Mr. Pierson's motion, that if there is any information that should be elicited from Deputy Rispone, that he be cross-examined by Mr. Pierson, which was done. The testimony on Pages 28 and 29 disclose under cross-examination by defense counsel Pierson that nothing transpired between the deputy and the juror which would have in any manner created a presumption of misconduct.

The cases cited before together with the case of *State v. McAllister*, 244 La. 42, 150 So. 2d 557 (1963), represent the Louisiana viewpoint with regard to the definition of separation and the legal effect of the communication between deputies who are also State witnesses.

The case of *Little v. The United States*, 73 F. 2d 861 (10th Cir. 1934), cited by the defense appears to disclose the Federal view with regard to the effect of a communication between jurors and third persons or officers in charge of a jury.

> "Private communications, possibly prejudicial, between jurors and third persons or witnesses, or the officer in charge are absolutely forbidden, and invalidate the verdict, at least *unless* their harmlessness is made to appear."

This view is further sustained by the case of *Sutherland v. United States*, 19 F. 2d 202 (8th Cir. 1927) wherein the issue concerned a witness conversing at length about some feature of the case with one juror.

> "The rebuttable presumption was that these communications by the juror *with outside* persons were prejudicial. There is no evidence in the case that the presumption was rebutted."

In the case of *Mattox v. United States*, 146 U.S. 140, 13 S. Ct. 50, 36 L. Ed. 917 (1892), the bailiff in charge of the jury discussed the case with the jurors in his charge.

There is no difficulty in these cases to see why reversals were had.

In the case at Bar the facts are different and any presumption which may have arisen as to misconduct were rebutted by direct testimony from the parties involved.

Passing to the State cases cited by defense counsel in support of their position, it appears that there are really none which are on all fours with the instant case.

In the case of *State v. Hornsby*, 8 Rob. 554 (1844), the jury was allowed to separate by the court. In our instant case, no separation actually occurred.

In *State v. Oteri*, 128 La. 939, 55 So. 582 (1911), a barber was allowed to serve the jury and in the case presented a factual situation where an outsider ac-

tually came in and mingled with the jury. However, the Court held that a presumption of misconduct does not arise where jurors have been kept together.

In *State v. McAllister*, 244 La. 42, 150 So. 2d 557 (1963), the identical factual situation which occurred in the instant case was passed on by the Supreme Court of Louisiana and the judgment of the lower court was affirmed, maintaining that any presumption which may have arisen as to misconduct was sufficiently rebutted.

CONCLUSION

In view of the cases cited it appears that the issues presented for review should be resolved in the following manner:

(1) The separation contemplated by LSA R.S. 15:-394 of the State of Louisiana and the Constitution of Louisiana and the Constitution of the United States is a separation from public or outside contact. If the jurors in individual groups or collectively are under direct custody and supervision of a deputy sheriff or bailiff, even though they may be in different cars or eat at separate tables, there is no legal separation of the jurors.

(2) The presence of a deputy sheriff or bailiff who is also a State witness with one or more jurors on the occasion of transporting jurors to and from meals and lodging or administering to their needs does not constitute a violation of the defendant's civil rights or his constitutional rights to a degree which would vitiate a jury verdict of guilty in a capital case.

(3) The contact between one or more jurors with such deputies or bailiffs constitutes a presumption of misconduct or prejudice which can and was rebutted.

(4) The defendant had a legal trial by an impartial jury and all of the rights guaranteed to him under the laws of the State of Louisiana and of the United States and their respective constitutions were properly safeguarded. The judgment should be affirmed.

Respectfully submitted,

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CERTIFICATE

I, Michael E. Culligan, a member of the Bar of the United States Supreme Court, hereby certify that this____ day of_____, 1964, a copy of the above and foregoing brief was served on Burrell J. Carter, Greensburg, Louisiana, Henry A. Mentz, Jr., 406 West Thomas Street, Hammond, Louisiana and Allen B. Pierson, Jr., 103 North Sixth Street, Ponchatoula, Louisiana, by depositing same in the United States Mail, postage prepaid.

_____

Of Counsel.